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Typesetting

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CHAPTER 1

UNIFORM COMMERCIAL CODE GENERAL PROVISIONS

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Part 1

Short Title, Construction, Application, and Subject Matter of the Code

30-1-101. Short title. (1) Chapters 1 through 9 of this title shall be known and may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9 of this title "code" means "Uniform Commercial Code" unless the context indicates otherwise.

History: En. Sec. 1-101, Ch. 264, L. 1963; amd. Sec. 12, Ch. 265, L. 1977; R.C.M. 1947, 87A-1-101.

30-1-102. Purposes — rules of construction — variation by agreement. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this code are:

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this code may be varied by agreement, except as otherwise provided in this code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations are to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this code unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

History: En. Sec. 1-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-102.

30-1-103. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

History: En. Sec. 1-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-103.

Cross-References

Contracts and Other Obligations, Title 28.

Debtor and creditor relationships, Title 31, ch. 2.

Uniform Fraudulent Transfer Act, Title 31, ch. 2, part 3.

Transfer of real property — fraudulent conveyances, Title 70, ch. 20, part 4.

30-1-104. Construction against implicit repeal. This code being a general code intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History: En. Sec. 1-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-104.

30-1-105. *(Temporary)* **Territorial application of the code — parties' power to choose applicable law.** (1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties. Failing agreement, this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.
Applicability of the Chapter on Leases. 30-2A-105 and 30-2A-106.
Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.
Governing law in the Chapter on Funds Transfers. 30-4A-507.
Letters of Credit. 30-5-136.
Applicability of the Chapter on Investment Securities. 30-8-120.
Perfection provisions of the Chapter on Secured Transactions. 30-9-103.

30-1-105. *(Effective July 1, 2001)* **Territorial application of code — parties' power to choose applicable law.** (1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation governs their rights and duties. Failing agreement, this code applies to transactions bearing an appropriate relation to this state.

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Applicability of the Chapter on Investment Securities. 30-8-120.
Law governing perfection, the effect of perfection or nonperfection, and the priority of security interest. 30-9-321 through 30-9-327.

History: En. Sec. 1-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-105; amd. Sec. 1, Ch. 402, L. 1983; amd. Sec. 1, Ch. 410, L. 1991; amd. Sec. 1, Ch. 536, L. 1997; amd. Sec. 129, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 at end substituted "Law governing perfection, the effect of perfection or nonperfection, and the priority of security interest. 30-9-321 through 30-9-327" for "Perfection provisions of the Chapter on Secured Transactions. 30-9-103"; and made minor changes in style. Amendment effective July 1, 2001.

30-1-106. Remedies to be liberally administered. (1) The remedies provided by this code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this code or by other rule of law.

(2) Any right or obligation declared by this code is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: En. Sec. 1-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-106.

Cross-References

GENERAL

Supplementary general principles of law applicable, 30-1-103.

Obligation of good faith, 30-1-203.

Formation in general, 30-2-204.

Remedies for breach of collateral contracts not impaired, 30-2-701.

Seller's resale including contract for resale, 30-2-706.

"Cover" — buyer's procurement of substitute goods, 30-2-712.

Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Action, 30-1-201.

Aggrieved party, 30-1-201.
Party, 30-1-201.
Remedy, 30-1-201.
Rights, 30-1-201.

30-1-107. Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

History: En. Sec. 1-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-107.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.
Formal requirements — statute of frauds, 30-2-201.
Modification, rescission, and waiver, 30-2-209.
Contractual modification or limitation of remedy, 30-2-719.

DEFINITIONAL

Aggrieved party, 30-1-201.
Rights, 30-1-201.
Signed, 30-1-201.
Written, 30-1-201.

30-1-108. Severability. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

History: En. Sec. 1-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-108.

Cross-References

DEFINITIONAL

Person, 30-1-201.

30-1-109. Section captions. Section captions are parts of this code.

History: En. Sec. 1-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-109.

Cross-References

Effect of Montana Code Annotated — official version, 1-11-103.

30-1-110. Provision for transition. Transactions validly entered into before January 1, 1965, and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this code as though such repeal or amendment had not occurred.

History: En. Sec. 10-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-10-102.

30-1-111. Laws not repealed. The Chapter on Documents of Title (Chapter 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (30-1-201).

References to a "branch" or "separate office" of a bank in this code are included to preserve uniformity in a Uniform Act and are not to be construed as affecting or amending in any way the laws of this state relative to the operation of branches or separate offices of a bank.

This code does not repeal or modify any of the following provisions: 30-11-504, relating to auctioneer's memorandum of sale; 69-14-216, relating to claims against carriers for damage to livestock; or Title 18, chapter 1, part 4, inclusive, relating to contract actions against the state.

History: En. Sec. 10-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-10-103.

Part 2

General Definitions and Principles of Interpretation

30-1-201. *(Temporary)* **General definitions.** Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be considered to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder", with respect to a:

(a) negotiable instrument, means the person in possession if the instrument is payable to bearer or to the person in possession;

(b) certified security, means the person in possession is the registered owner, the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or

(c) document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper that is subject to chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (30-2-326). Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;

(iii) the lessee has an option to renew the lease or to become the owner of the goods;

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market value for the use of the goods for the term of the renewal at the time the option is to be performed; or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) additional consideration is not nominal if:

(A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed;

(ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iv) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

30-1-201. *(Effective July 1, 2001)* **General definitions.** Subject to additional definitions contained in the subsequent chapters of this code that are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods, in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other mineral at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or

in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder", with respect to a:

(a) negotiable instrument, means the person in possession if the instrument is payable to bearer or to the person in possession;

(b) certified security, means the person in possession is the registered owner, the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or

(c) document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract

for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9. Except as otherwise provided in 30-2-505, the right of a seller or lessor of goods under chapter 2 or 2A to retain or acquire possession of the goods in not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with chapter 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest".

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

History: En. Sec. 1-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-201; amd. Sec. 2, Ch. 402, L. 1983; amd. Sec. 2, Ch. 410, L. 1991; amd. Sec. 130, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 substituted definition of buyer in ordinary course of business for former definition that read: ""Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be considered to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt"; substituted definition of security interest for former definition that read: "(a) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper that is subject to chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (30-2-326). Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;

(iii) the lessee has an option to renew the lease or to become the owner of the goods;

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market value for the use of the goods for the term of the renewal at the time the option is to be performed; or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) additional consideration is not nominal if:

(A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed;

(ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iv) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into"; and made minor changes in style. Amendment effective July 1, 2001.

30-1-202. Prima facie evidence by third-party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

History: En. Sec. 1-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-202.

Cross-References

DEFINITIONAL

Bill of lading, 30-1-201.

Contract, 30-1-201.

Genuine, 30-1-201.

30-1-203. Obligation of good faith. Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement.

History: En. Sec. 1-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-203.

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Option to accelerate at will, 30-1-208.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Substituted performance, 30-2-614.

Excuse by failure of presupposed conditions, 30-2-615.

DEFINITIONAL

Contract, 30-1-201.

Good faith, 30-1-201, 30-2-103.

30-1-204. Time — reasonable time — "seasonably". (1) Whenever this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

History: En. Sec. 1-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-204.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.

30-1-205. Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

History: En. Sec. 1-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-205.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Definitions — merchant — between merchants — financing agency, 30-2-104.

Formal requirements — statute of frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

Formation in general, 30-2-204.

Course of performance or practical construction, 30-2-208.

General obligation and construction of contract, Title 30, ch. 2, part 3.

Unconscionable contract or clause, 30-2-302.

DEFINITIONAL

Agreement, 30-1-201.

Contract, 30-1-201.

Party, 30-1-201.

Term, 30-1-201.

30-1-206. Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) a contract for the sale of personal property is not enforceable by way of action or defense beyond $5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by the party's authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (30-2-201) nor of securities (30-8-123) nor to security agreements [(30-9-203)] 30-9-213. *(Bracketed reference deleted July 1, 2001.)*

History: En. Sec. 1-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-206; amd. Sec. 2, Ch. 536, L. 1997; amd. Sec. 131, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 at end substituted "30-9-213" for "30-9-203". Amendment effective July 1, 2001.

Cross-References

GENERAL

What contracts must be in writing, 28-2-903.

DEFINITIONAL

Action, 30-1-201.
Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Sale, 30-2-106.
Signed, 30-1-201.
Writing, 30-1-201.

30-1-207. Performance or acceptance under reservation of rights. (1) A party that, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction.

History: En. Sec. 1-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-207; amd. Sec. 3, Ch. 410, L. 1991.

Cross-References

GENERAL

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

DEFINITIONAL

Party, 30-1-201.
Rights, 30-1-201.

30-1-208. Option to accelerate at will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

History: En. Sec. 1-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-208.

Cross-References

DEFINITIONAL

Burden of establishing, 30-1-201.
Good faith, 30-1-201.
Party, 30-1-201.
Term, 30-1-201.

30-1-209. Subordinated obligations. An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

History: En. Sec. 3, Ch. 402, L. 1983.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.
Creditor, 30-1-201.
Debtor, 30-9-105.
Person, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

CHAPTER 2

UNIFORM COMMERCIAL CODE SALES

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30-2-105. Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit".
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30-2-324. "No arrival, no sale" term.

30-2-325. "Letter of credit" term — "confirmed credit".
30-2-326. Sale on approval and sale or return — [consignment sales and] rights of creditors.
30-2-327. Special incidents of sale on approval and sale or return.

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30-2-603. Merchant buyer's duties as to rightfully rejected goods.
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30-2-606. What constitutes acceptance of goods.
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30-2-721. Remedies for fraud.
30-2-722. Who can sue third parties for injury to goods.
30-2-723. Proof of market price — time and place.
30-2-724. Admissibility of market quotations.
30-2-725. Statute of limitations in contracts for sale.

Chapter Cross-References

Sales, Title 30, ch. 11.

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

Marketing of agricultural products generally, Title 80, ch. 11.

Regulation of sale of milk — policy, 81-23-102.

Part 1

Short Title, General Construction, and Subject Matter

30-2-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Sales.

History: En. Sec. 2-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-101.

30-2-102. Scope — certain security and other transactions excluded from this chapter. Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

History: En. Sec. 2-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-102.

Cross-References

GENERAL

Secured transactions — sale of accounts and chattel paper, Title 30, ch. 9.

Sales, Title 30, ch. 11.

Personal solicitation sales, Title 30, ch. 14, part 5.

Lost property — duties of finder, Title 70, ch. 5, part 1.

DEFINITIONAL

Contract, 30-1-201.
Contract for sale, 30-2-106.
Present sale, 30-2-106.
Sale, 30-2-106.

30-2-103. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith", in the case of a merchant, means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Acceptance". 30-2-606.
"Banker's credit". 30-2-325.
"Between merchants". 30-2-104.
"Cancellation". 30-2-106(4).
"Commercial unit". 30-2-105.
"Confirmed credit". 30-2-325.
"Conforming to contract". 30-2-106.

"Contract for sale". 30-2-106.
"Cover". 30-2-712.
"Entrusting". 30-2-403.
"Financing agency". 30-2-104.
"Future goods". 30-2-105.
"Goods". 30-2-105.
"Identification". 30-2-501.
"Installment contract". 30-2-612.
"Letter of credit". 30-2-325.
"Lot". 30-2-105.
"Merchant". 30-2-104.
"Overseas". 30-2-323.
"Person in position of seller". 30-2-707.
"Present sale". 30-2-106.
"Sale". 30-2-106.
"Sale on approval". 30-2-326.
"Sale or return". 30-2-326.
"Termination". 30-2-106.

(3) The following definitions in other chapters apply to this chapter:
"Check". 30-3-104.
"Consignee". 30-7-102.
"Consignor". 30-7-102.
"Consumer goods". [30-9-109] 30-9-122.
"Dishonor". 30-3-512.
"Draft". 30-3-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter. *(Bracketed reference deleted July 1, 2001.)*

History: En. Sec. 2-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-103; amd. Sec. 4, Ch. 410, L. 1991; amd. Sec. 132, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 in (3) in reference to "consumer goods" substituted "30-9-122" for "30-9-109". Amendment effective July 1, 2001.

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

DEFINITIONAL

Person, 30-1-201.

30-2-104. Definitions — "merchant" — "between merchants" — "financing agency". (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (30-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

History: **En. Sec. 2-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-104.**

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

C.I.F. and C.&F. terms, 30-2-320.

"Letter of credit" term — "confirmed credit", 30-2-325.

Secured transactions, sale of accounts and chattel paper, Title 30, ch. 9.

Merchant's rights, Title 30, ch. 11, part 3.

Commission merchants, Title 30, ch. 11, part 4.

DEFINITIONAL

Bank, 30-1-201.

Buyer, 30-2-103.

Contract for sale, 30-2-106.

Document of title, 30-1-201.

Draft, 30-3-104.

Goods, 30-2-105.

Person, 30-1-201.

Purchase, 30-1-201.

Seller, 30-2-103.

30-2-105. Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit". (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Chapter 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (30-2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

History: **En. Sec. 2-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-105.**

Cross-References

GENERAL

Formal requirements — statute of frauds, 30-2-201.

Insurable interest in goods — manner of identification of goods, 30-2-501.

DEFINITIONAL

Buyer, 30-2-103.

Contract, 30-1-201.

Contract for sale, 30-2-106.

Fungible, 30-1-201.

Money, 30-1-201.

Present sale, 30-2-106.

Sale, 30-2-106.

Seller, 30-2-103.

30-2-106. Definitions — "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming" to contract — "termination" — "cancellation". (1) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (30-2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

History: En. Sec. 2-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-106.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Sale defined, 30-11-101.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-107. Goods to be severed from realty — recording. (1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller, but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third-party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

History: En. Sec. 2-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-107; amd. Sec. 4, Ch. 402, L. 1983.

Cross-References

GENERAL

Definitions — transferability — goods — future goods — lot — commercial unit, 30-2-105.

Formal requirements — statute of frauds, 30-2-201.

Secured transactions — sale of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Present sale, 30-2-106.
Rights, 30-1-201.
Seller, 30-2-103.

Part 2

Form, Formation, and Readjustment of Contract

30-2-201. Formal requirements — statute of frauds. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (30-2-606).

History: En. Sec. 2-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-201.

Cross-References

GENERAL

Contracts required to be in writing, 28-2-903.

Final written expression — parol or extrinsic evidence, 30-2-202.

Additional terms in acceptance or confirmation, 30-2-207.

Modification, rescission, and waiver, 30-2-209.

Price payable in money, goods, realty, or otherwise, 30-2-304.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

DEFINITIONAL

Action, 30-1-201.
Between merchants, 30-2-104.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Notice, 30-1-201.
Party, 30-1-201.
Reasonable time, 30-1-204.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-202. Final written expression — parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade (30-1-205) or by course of performance (30-2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

History: En. Sec. 2-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-202.

Cross-References

GENERAL

When extrinsic evidence concerning written agreement may be considered, 28-2-905.

Additional terms in acceptance or confirmation, 30-2-207.

Unconscionable contract or clause, 30-2-302.

Exclusion or modification of warranties, 30-2-316.

DEFINITIONAL

Agreement, 30-1-201.
Course of dealing, 30-1-205.
Parties, 30-1-201.
Term, 30-1-201.
Usage of trade, 30-1-205.
Written and writing, 30-1-201.

30-2-203. Seals inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

History: En. Sec. 2-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-203.

Cross-References

GENERAL

Seals, Title 1, ch. 4, part 2.
Firm offers, 30-2-205.

DEFINITIONAL

Contract for sale, 30-2-106.
Goods, 30-2-105.
Writing, 30-1-201.

30-2-204. Formation in general. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

History: En. Sec. 2-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-204.

Cross-References

GENERAL

Essential elements of contract, 28-2-102.

Supplementary general principles of law applicable, 30-1-103.

Formal requirements — statute of frauds, 30-2-201.

Unconscionable contract or clause, 30-2-302.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Term, 30-1-201.

30-2-205. Firm offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed 3 months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

History: En. Sec. 2-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-205.

Cross-References

GENERAL

Contracts — communication of consent — revocation of proposal, Title 28, ch. 2, part 5.

Purposes — rule of construction — variation by agreement, 30-1-102.

Formal requirements — statute of frauds, 30-2-201.

Unconscionable contract or clause, 30-2-302.

Agreement to sell and buy, 30-11-106.

DEFINITIONAL

Goods, 30-2-105.
Merchant, 30-2-104.
Signed, 30-1-201.
Writing, 30-1-201.

30-2-206. Offer and acceptance in formation of contract. (1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

History: En. Sec. 2-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-206.

Cross-References

GENERAL

Essential characteristics of consent, 28-2-301.

Agreement to sell and buy, 30-11-106.

DEFINITIONAL

Buyer, 30-2-103.

Conforming, 30-2-106.

Contract, 30-1-201.

Goods, 30-2-105.

Notifies, 30-1-201.

Reasonable time, 30-1-204.

30-2-207. Additional terms in acceptance or confirmation. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional or different terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this code.

History: En. Sec. 2-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-207; amd. Sec. 5, Ch. 402, L. 1983.

Cross-References

Effect of written contract on oral agreements, 28-2-904.

Rules of construction — variation by agreement, 30-1-102.

Transactions between merchants, 30-2-104.

Unconscionable contract or clause, 30-2-302.

Buyer's right to inspection of goods, 30-2-513.

Manner and effect of rightful rejection, 30-2-602.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Right to adequate assurance of performance, 30-2-609.

"Installment contract" — breach, 30-2-612.

Substituted performance, 30-2-614.

Excuse by failure of presupposed conditions, 30-2-615.

Procedure on notice claiming excuse, 30-2-616.

Liquidation or limitation of damages — deposits, 30-2-718.

Contractual modification or limitation of remedy, 30-2-719.

30-2-208. Course of performance or practical construction. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (30-1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

History: En. Sec. 2-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-208.

Cross-References

Intention of parties, Title 28, ch. 3, part 3.

Final written expression — parol or extrinsic evidence, 30-2-202.

Modification, rescission, and waiver, 30-2-209.

Buyer's rights on improper delivery, 30-2-601.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

30-2-209. Modification, rescission and waiver. (1) An agreement modifying a contract within this chapter needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this chapter (30-2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

History: En. Sec. 2-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-209.

Cross-References

GENERAL

Modification of contracts, Title 28, ch. 2, part 16.

Rescission of contracts, Title 28, ch. 2, part 17.

Obligation of good faith, 30-1-203.

Definitions — contract — agreement — contract for sale — sale — present sale — conforming to contract — termination — cancellation, 30-2-106.

Formal requirements — statute of frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

Course of performance or practical construction, 30-2-208.

Excuse by failure of presupposed conditions, 30-2-615.

Procedure on notice claiming excuse, 30-2-616.

DEFINITIONAL

Agreement, 30-1-201.
Between merchants, 30-2-104.
Contract, 30-1-201.
Notification, 30-1-201.
Signed, 30-1-201.
Term, 30-1-201.
Writing, 30-1-201.

30-2-210. *(Temporary)* **Delegation of performance — assignment of rights.** (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (30-2-609).

30-2-210. *(Effective July 1, 2001)* **Delegation of performance — assignment of rights.** (1) A party may perform the party's duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having the party's original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except when the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on the other party by the contract, or impair materially the other party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of the assignor's entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but:

(a) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer; and

(b) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the

language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment that delegates performance as creating reasonable grounds for insecurity and may without prejudice to the other party's rights against the assignor demand assurances from the assignee (30-2-609).

History: En. Sec. 2-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-210; amd. Sec. 133, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 inserted (3) concerning security interest; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

GENERAL

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Output, requirements, and exclusive dealings, 30-2-306.

Letters of credit, Title 30, ch. 5.

Secured transactions, sale of accounts, contract rights, and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Party, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

Part 3

General Obligation and Construction of Contract

Part Cross-References

Interpretation of contracts, Title 28, ch. 3.

30-2-301. General obligations of parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

History: En. Sec. 2-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-301.

Cross-References

GENERAL

Obligations in general, Title 28, ch. 1.

Remedies to be liberally administered, 30-1-106.

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

Modification, rescission, and waiver, 30-2-209.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

"Installment contract" — breach, 30-2-612.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

30-2-302. Unconscionable contract or clause. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

History: En. Sec. 2-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-302.

Cross-References

GENERAL

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

DEFINITIONAL

Contract, 30-1-201.

30-2-303. Allocation or division of risks. Where this chapter allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

History: En. Sec. 2-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-303.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

DEFINITIONAL

Agreement, 30-1-201.
Party, 30-1-201.

30-2-304. Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

History: En. Sec. 2-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-304.

Cross-References

GENERAL

Receipt for money, instrument, or property delivered, 28-1-1111.

Purposes — rules of construction — variation by agreement, 30-1-102.

Supplementary general principles of law applicable, 30-1-103.

Construction against implicit repeal, 30-1-104.

Goods to be severed from realty — recording, 30-2-107.

DEFINITIONAL

Goods, 30-2-105.
Money, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

30-2-305. Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as canceled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

History: En. Sec. 2-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-305.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Formation in general, 30-2-204.

Options and cooperation respecting performance, 30-2-311.

Anticipatory repudiation, 30-2-610.

Seller's resale including contract for resale, 30-2-706.

"Cover" — buyer's procurement of substitute goods, 30-2-712.

Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Agreement, 30-1-201.
Burden of establishing, 30-1-201.

Buyer, 30-2-103.
Cancellation, 30-2-106.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Fault, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Receipt of goods, 30-2-103.
Seller, 30-2-103.
Term, 30-1-201.

30-2-306. Output, requirements and exclusive dealings. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

History: En. Sec. 2-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-306.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Delegation of performance — assignment of rights, 30-2-210.

Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Good faith, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

30-2-307. Delivery in single lot or several lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

History: En. Sec. 2-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-307.

Cross-References

GENERAL

Application of performance when several obligations, 28-1-1106.

Manner of seller's tender of delivery, 30-2-503.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Buyer's rights on improper delivery, 30-2-601.

Revocation of acceptance in whole or in part, 30-2-608.

Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Contract for sale, 30-2-106.
Goods, 30-2-105.
Lot, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.

30-2-308. Absence of specified place for delivery. Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

History: En. Sec. 2-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-308.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Manner of seller's tender of delivery, 30-2-503.

Shipment by seller, 30-2-504.

Seller's shipment under reservation, 30-2-505.

Payment by buyer before inspection, 30-2-512.

Collection of documentary drafts, Title 30, ch. 4, part 5.

Letters of credit, Title 30, ch. 5.

Delivery — where made, 30-11-204.

Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Contract for sale, 30-2-106.

Delivery, 30-1-201.

Document of title, 30-1-201.

Goods, 30-2-105.

Party, 30-1-201.

Seller, 30-2-103.

30-2-309. Absence of specific time provisions — notice of termination. (1) The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

History: En. Sec. 2-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-309.

Cross-References

GENERAL

Time of performance, Title 28, ch. 3, part 6.

Obligation of good faith, 30-1-203.

Time — reasonable time — seasonably, 30-1-204.

Definitions — contract — agreement — contract for sale — sale — present sale — conforming to contract — termination — cancellation, 30-2-106.

Formation in general, 30-2-204.

Third-party beneficiaries of warranties express or implied, 30-2-318.

C.I.F. and C.&F. terms, 30-2-320.

C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.

Shipment by seller, 30-2-504.

Tender of payment by buyer — payment by check, 30-2-511.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

When documents deliverable on acceptance — when on payment, 30-2-514.

Right to adequate assurance of performance, 30-2-609.

Anticipatory repudiation, 30-2-610.

Seller's remedies in general, 30-2-703.

DEFINITIONAL

Agreement, 30-1-201.

Contract, 30-1-201.

Notification, 30-1-201.

Party, 30-1-201.

Reasonable time, 30-1-204.

Termination, 30-2-106.

30-2-310. Open time for payment or running of credit — authority to ship under reservation. Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (30-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

History: En. Sec. 2-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-310.

Cross-References

GENERAL

Absence of specified place for delivery, 30-2-308.

Seller's shipment under reservation, 30-2-505.

Risk of loss in absence of breach, 30-2-509.

Tender of payment by buyer — payment by check, 30-2-511.

Payment by buyer before inspection, 30-2-512.

Bank deposits and collections, Title 30, ch. 4.

DEFINITIONAL

Buyer, 30-2-103.

Delivery, 30-1-201.

Document of title, 30-1-201.

Goods, 30-2-105.

Receipt of goods, 30-2-103.

Seller, 30-2-103.

Send, 30-1-201.

Term, 30-1-201.

30-2-311. Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of 30-2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of 30-2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

History: En. Sec. 2-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-311.

Cross-References

GENERAL

Extinction of obligation by performance, Title 28, ch. 1, part 11.

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

When delay or failure to perform or offer to perform excused, 28-1-1301.

Obligation of good faith, 30-1-203.

Right to adequate assurance of performance, 30-2-609.

Substituted performance, 30-2-614.

DEFINITIONAL

Agreement, 30-1-201.

Buyer, 30-2-103.

Contract for sale, 30-2-106.

Goods, 30-2-105.

Party, 30-1-201.

Remedy, 30-1-201.

Seasonably, 30-1-204.

Seller, 30-2-103.

30-2-312. Warranty of title and against infringement — buyer's obligation against infringement. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

History: En. Sec. 2-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-312.

Cross-References

GENERAL

Title to thing offered, 28-1-1221.

Obligation of good faith, 30-1-203.

Exclusion or modification of warranties, 30-2-316.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Right to adequate assurance of performance, 30-2-609.

Statute of limitations in contracts for sale, 30-2-725.

Warranty of title to personal property, 30-11-211.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Buyer, 30-2-103.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Person, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-313. Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

History: En. Sec. 2-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-313.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Supplementary general principles of law applicable, 30-1-103.

Course of dealing and usage of trade, 30-1-205.

Modification, rescission, and waiver, 30-2-209.

Implied warranty — merchantability — usage of trade, 30-2-314.

Exclusion or modification of warranties, 30-2-316.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Warranty on sale by sample, 30-11-212.

Warranty when seller knows that buyer relies on seller's statements, 30-11-213.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-314. Implied warranty — merchantability — usage of trade. (1) Unless excluded or modified (30-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (30-2-316) other implied warranties may arise from course of dealing or usage of trade.

History: En. Sec. 2-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-314.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Definitions — merchant — between merchants — financing agency, 30-2-104.

Implied warranty — fitness for particular purpose, 30-2-315.

Manufacturer's warranty against latent defects, 30-11-215.

Warranty of fitness for particular purpose, 30-11-216.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Merchant, 30-2-104.
Seller, 30-2-103.

30-2-315. Implied warranty — fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

History: En. Sec. 2-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-315.

Cross-References

GENERAL

Allocation or division of risks, 30-2-303.

Implied warranty — merchantability — usage of trade, 30-2-314.

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

Warranty of fitness for particular purpose, 30-11-216.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-316. Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (30-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty;

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade;

(d) in sales of cattle, hogs, sheep, or horses, there are no implied warranties, as defined in this chapter, that the cattle, hogs, sheep, or horses are free from sickness or disease; and

(e) in sales of any seed for planting (including both botanical and vegetative types of seed, whether certified or not), there are no implied warranties, as defined in this chapter, that the seeds are free from disease, virus, or any kind of pathogenic organisms.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (30-2-718 and 30-2-719).

History: En. Sec. 2-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-316; amd. Sec. 1, Ch. 95, L. 1979; amd. Sec. 1, Ch. 33, L. 1983.

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

Agreement not to assert defenses against assignee — modification of sales warranties when security agreement exists, 30-9-206.

No implied warranty in mere contract for sale, 30-11-210.

Effect of general warranty, 30-11-223.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Course of dealing, 30-1-205.
Goods, 30-2-105.
Remedy, 30-1-201.
Seller, 30-2-103.
Usage of trade, 30-1-205.

30-2-317. Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

History: En. Sec. 2-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-317.

Cross-References

GENERAL

Express warranties by affirmation, promise, description, or sample, 30-2-313.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

Warranty on sale by sample, 30-11-212.

Effect of general warranty, 30-11-223.

DEFINITIONAL

Party, 30-1-201.

30-2-318. Third-party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

History: En. Sec. 2-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-318.

Cross-References

GENERAL

Implied warranty — merchantability — usage of trade, 30-2-314.

Exclusion or modification of warranties, 30-2-316.

Buyer's incidental and consequential damages, 30-2-715.

Liquidation or limitation of damages — deposits, 30-2-718.

Contractual modification or limitation of remedy, 30-2-719.

Agreement not to assert defenses against assignee — modification of sales warranties when security agreement exists, 30-9-206.

Manufacturer's warranty against latent defects, 30-11-215.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-319. F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (30-2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (30-2-503);

(c) when under either subsection (1)(a) or (1)(b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (30-2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (1)(c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (30-2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History: En. Sec. 2-319, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-319.

Cross-References

GENERAL

Expense of transportation, 30-11-205.
Transportation, 30-11-207.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Goods, 30-2-105.
Seasonably, 30-1-204.
Seller, 30-2-103.
Term, 30-1-201.

30-2-320. C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to:

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History: En. Sec. 2-320, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-320.

Cross-References

Prima facie evidence by third-party documents, 30-1-202.

C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Risk of loss in absence of breach, 30-2-509.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Letters of credit, Title 30, ch. 5.

Expense of transportation, 30-11-205.

30-2-321. C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival. Under a contract containing a term C.I.F. or C.&F.:

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

History: En. Sec. 2-321, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-321.

Cross-References

GENERAL

C.I.F. and C.&F. terms, 30-2-320.
"No arrival, no sale" term, 30-2-324.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Delivery, 30-1-201.
Goods, 30-2-105.
Seller, 30-2-103.
Term, 30-1-201.

30-2-322. Delivery "ex-ship". (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed:

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

History: En. Sec. 2-322, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-322.

Cross-References

GENERAL

F.O.B. and F.A.S. terms, 30-2-319.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.
Term, 30-1-201.

30-2-323. Form of bill of lading required in overseas shipment — "overseas". (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of 30-2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

History: En. Sec. 2-323, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-323.

Cross-References

GENERAL

Bills of lading — special provisions, Title 30, ch. 7, part 3.

DEFINITIONAL

Bill of lading, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Financing agency, 30-2-104.
Person, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.
Term, 30-1-201.

30-2-324. "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the nonarrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there has been casualty to identified goods (30-2-613).

History: En. Sec. 2-324, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-324.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Insurable interest in goods — manner of identification of goods, 30-2-501.

DEFINITIONAL

Buyer, 30-2-103.

Conforming, 30-2-106.

Contract, 30-1-201.

Fault, 30-1-201.

Goods, 30-2-105.

Sale, 30-2-106.

Seller, 30-2-103.

Term, 30-1-201.

30-2-325. "Letter of credit" term — "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

History: En. Sec. 2-325, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-325.

Cross-References

GENERAL

Deposit of money offered in payment, 28-1-1225.

Power to transfer — good faith purchase of goods — entrusting, 30-2-403.

Tender of payment by buyer — payment by check, 30-2-511.

Letters of credit, Title 30, ch. 5.

DEFINITIONAL

Buyer, 30-2-103.

Contract for sale, 30-2-106.

Draft, 30-3-104.

Financing agency, 30-2-104.

Notifies, 30-1-201.

Overseas, 30-2-323.

Purchaser, 30-1-201.

Seasonably, 30-1-204.

Seller, 30-2-103.

Term, 30-1-201.

30-2-326. Sale on approval and sale or return — [consignment sales and] rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a "sale on approval" if the goods are delivered primarily for use; and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) [Except as provided in subsection (3), goods] Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

[(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery:

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or

(c) complies with the filing provisions of the Chapter on Secured Transactions (Chapter 9).]

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (30-2-201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (30-2-202). *(Bracketed material deleted July 1, 2001.)*

History: En. Sec. 2-326, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-326; amd. Sec. 134, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 at beginning of (2) deleted "Except as provided in subsection (3)"; deleted former (3) that read: "(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery:

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or

(c) complies with the filing provisions of the Chapter on Secured Transactions (Chapter 9)"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

GENERAL

Commission merchants, Title 30, ch. 11, part 4.

DEFINITIONAL

Between merchants, 30-2-104.
Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Creditor, 30-1-201.
Goods, 30-2-105.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-327. Special incidents of sale on approval and sale or return. (1) Under a sale on approval unless otherwise agreed:

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed:

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

History: En. Sec. 2-327, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-327.

Cross-References

GENERAL

Time — reasonable time — "seasonably", 30-1-204.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's rights on improper delivery, 30-2-601.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Revocation of acceptance in whole or in part, 30-2-608.

DEFINITIONAL
Agreement, 30-1-201.
Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Notification, 30-1-201.
Notifies, 30-1-201.
Sale on approval, 30-2-326.
Sale or return, 30-2-326.
Seasonably, 30-1-204.
Seller, 30-2-103.

Part 4

Title, Creditors, and Good Faith Purchasers

30-2-401. Passing of title — reservation for security — limited application of this section. Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (30-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle or cattle being released from auction yards for interstate shipment the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn notifies the seller, or his designated bank, that the instrument of payment has cleared the bank for payment; and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

History: En. Sec. 2-401, Ch. 264, L. 1963; amd. Sec. 1, Ch. 130, L. 1975; R.C.M. 1947, 87A-2-401; amd. Sec. 1, Ch. 160, L. 1989.

Cross-References

GENERAL

Title to thing offered, 28-1-1221.

Scope — certain security and other transactions excluded from this chapter, 30-2-102.

Rights of seller's creditors against sold goods, 30-2-402.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Buyer's right to goods on seller's insolvency, 30-2-502.

Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Document of title, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Remedy, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.

30-2-402. Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (30-2-502 and 30-2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller:

(a) under the provisions of the Chapter on Secured Transactions (Chapter 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

History: En. Sec. 2-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-402.

Cross-References

GENERAL

Thing offered to be kept separate, 28-1-1223.

When seller must act as depositary, 30-11-201.

DEFINITIONAL

Contract for sale, 30-2-106.
Creditor, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Merchant, 30-2-104.
Money, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-403. Power to transfer — good faith purchase of goods — "entrusting". (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

(a) the transferor was deceived as to the identity of the purchaser;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as theft under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods has been such as to constitute theft under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9) and documents of title (chapter 7).

History: **En. Sec. 2-403, Ch. 264, L. 1963; amd. Sec. 63, Ch. 359, L. 1977; R.C.M. 1947, 87A-2-403; amd. Sec. 5, Ch. 410, L. 1991.**

Cross-References

GENERAL

General duty of care, 28-1-201.

Offer to be made in good faith, 28-1-1209.

Purposes — rules of construction — variation by agreement, 30-1-102.

Supplementary general principles of law applicable, 30-1-103.

Rights of seller's creditors against sold goods, 30-2-402.

"Person in the position of a seller", 30-2-707.

Title under warehouse receipt defeated in certain cases, 30-7-205.

Protection of buyers of goods, 30-9-307.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.

Good faith, 30-1-201, 30-2-103.

Goods, 30-2-105.

Merchant, 30-2-104.

Person, 30-1-201.

Purchaser, 30-1-201.

Signed, 30-1-201.

Term, 30-1-201.

Value, 30-1-201.

Part 5
Performance

Part Cross-References

Extinction of obligation by performance, Title 28, ch. 1, part 11.

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Prevention of performance, Title 28, ch. 1, part 13.

30-2-501. Insurable interest in goods — manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

History: En. Sec. 2-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-501.

Cross-References

GENERAL

Thing offered to be kept separate, 28-1-1223.

Definitions — transferability — goods — future goods — lot — commercial unit, 30-2-105.

Goods to be severed from realty — recording, 30-2-107.

Absence of specified place for delivery, 30-2-308.

Rights of seller's creditors against sold goods, 30-2-402.

Buyer's right to goods on seller's insolvency, 30-2-502.

Manner of seller's tender of delivery, 30-2-503.

Risk of loss in absence of breach, 30-2-509.

Effect of breach on risk of loss, 30-2-510.

Seller's remedies in general, 30-2-703.

Commission merchants to acknowledge receipt of property, 30-11-401.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Future goods, 30-2-105.
Goods, 30-2-105.
Notification, 30-1-201.
Party, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-502. *(Temporary)* **Buyer's right to goods on seller's insolvency.** (1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

30-2-502. *(Effective July 1, 2001)* **Buyer's right to goods on seller's insolvency.** (1) Subject to subsections (2) and (3) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which the buyer has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) in other cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating the buyer's special property has been made by the buyer, the buyer acquires the right to recover the goods only if they conform to the contract for sale.

History: En. Sec. 2-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-502; amd. Sec. 135, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 near beginning of (1) inserted reference to subsection (3); inserted (1)(a) concerning household goods; at beginning of (1)(b) inserted "in other cases"; inserted (2) concerning right to recover goods; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

GENERAL

Rights of seller's creditors against sold goods, 30-2-402.

Seller's remedies on discovery of buyer's insolvency, 30-2-702.

Secured transactions — sales of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Insolvent, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-503. Manner of seller's tender of delivery. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection (2) of 30-2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

History: En. Sec. 2-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-503.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Specific matters involving tender, 30-1-205, 30-2-301, 30-2-306 through 30-2-319, 30-2-321, 30-2-504, 30-2-507, 30-2-511, 30-2-513, 30-2-612, 30-2-614.

Course of dealing and usage of trade, 30-1-205.

General obligations of parties, 30-2-301.

Absence of specified place for delivery, 30-2-308.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Effect of seller's tender — delivery in condition, 30-2-507.

Risk of loss in absence of breach, 30-2-509.

Buyer's right to inspection of goods, 30-2-513.

Substituted performance, 30-2-614.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Delivery on demand, 30-11-203.
Delivery — where made, 30-11-204.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Delivery, 30-1-201.
Dishonor, 30-3-508.
Document of title, 30-1-201.
Draft, 30-3-104.
Goods, 30-2-105.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Receipt of goods, 30-2-103.
Rights, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.
Written, 30-1-201.

30-2-504. Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

History: En. Sec. 2-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-504.

Cross-References

GENERAL

Extinction when directions of creditor followed, 28-1-1104.
Obligation of good faith, 30-1-203.
Options and cooperation respecting performance, 30-2-311.
F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.
Form of bill of lading required in overseas shipment — "overseas", 30-2-323.
Manner of seller's tender of delivery, 30-2-503.
Buyer's rights on improper delivery, 30-2-601.
Substituted performance, 30-2-614.
Excuse by failure of presupposed conditions, 30-2-615.
Delivery on demand, 30-11-203.
Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.
Usage of trade, 30-1-205.

30-2-505. Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of 30-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

History: En. Sec. 2-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-505.

Cross-References

GENERAL

When offer may be conditional, 28-1-1211.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's right to goods on seller's insolvency, 30-2-502.

Shipment by seller, 30-2-504.

Seller's stoppage of delivery in transit or otherwise, 30-2-705.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Bill of lading, 30-1-201.
Buyer, 30-2-103.
Consignee, 30-7-102.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Financing agency, 30-2-104.
Goods, 30-2-105.
Holder, 30-1-201.
Person, 30-1-201.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-506. Rights of financing agency. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

History: En. Sec. 2-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-506.

Cross-References

GENERAL

Rights arising out of obligation transferable, 28-1-1001.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's right to goods on seller's insolvency, 30-2-502.

Bank deposits and collections, Title 30, ch. 4.

Letters of credit, Title 30, ch. 5.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Buyer, 30-2-103.
Document of title, 30-1-201.
Draft, 30-3-104.
Financing agency, 30-2-104.
Good faith, 30-2-103.
Goods, 30-2-105.
Honor, 30-1-201.
Purchase, 30-1-201.
Rights, 30-1-201.
Value, 30-1-201.

30-2-507. Effect of seller's tender — delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

History: En. Sec. 2-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-507.

Cross-References

GENERAL

When obligation extinguished by offer of performance, 28-1-1201.

Offeror to be willing and able to perform, 28-1-1210.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Passing of title — reservation for security, 30-2-401.

Good faith purchase of goods, 30-2-403.

Manner of seller's tender of delivery, 30-2-503.

Tender of payment by buyer — payment by check, 30-2-511.

Buyer's rights on improper delivery, 30-2-601.

Substituted performance, 30-2-614.

Seller's remedies on discovery of buyer's insolvency, 30-2-702.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

"Cover" — buyer's procurement of substitute goods, 30-2-712.

Buyer's damages for nondelivery or repudiation, 30-2-713.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-508. Cure by seller of improper tender or delivery — replacement. (1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

History: En. Sec. 2-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-508.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Offer of partial performance ineffective, 28-1-1203.

Course of dealing and usage of trade, 30-1-205.

Unconscionable contract or clause, 30-2-302.

Tender of payment by buyer — payment by check, 30-2-511.

Buyer's rights on improper delivery, 30-2-601.

Remedies for fraud, 30-2-721.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Money, 30-1-201.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-509. Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (30-2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a nonnegotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of 30-2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (30-2-327) and on effect of breach on risk of loss (30-2-510).

History: En. Sec. 2-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-509.

Cross-References

GENERAL

Shipment by seller, 30-2-504.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Party, 30-1-201.
Receipt of goods, 30-2-103.
Sale on approval, 30-2-326.
Seller, 30-2-103.

30-2-510. Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

History: En. Sec. 2-510, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-510.

Cross-References

GENERAL

Breach of contract, 27-1-311.
Risk of loss in absence of breach, 30-2-509.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-511. Tender of payment by buyer — payment by check. (1) Unless otherwise agreed, tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this code on the effect of an instrument on an obligation (30-3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

History: En. Sec. 2-511, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-511; amd. Sec. 6, Ch. 410, L. 1991.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.
Deposit of money offered in payment, 28-1-1225.
Delivery in single lot or several lots, 30-2-307.
Open time for payment or running of credit — authority to ship under reservation, 30-2-310.
F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.
Delivery "ex-ship", 30-2-322.
"Letter of credit" term — "confirmed credit", 30-2-325.
Manner of seller's tender of delivery, 30-2-503.
Shipment by seller, 30-2-504.
Effect of seller's tender — delivery on condition, 30-2-507.
Buyer's right to inspection of goods, 30-2-513.
Right to adequate assurance of performance, 30-2-609.
Substituted performance, 30-2-614.
Seller's remedies on discovery of buyer's insolvency, 30-2-702.
Negotiable instruments, Title 30, ch. 3.

DEFINITIONAL

Buyer, 30-2-103.
Check, 30-3-104.
Dishonor, 30-3-508.
Party, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.

30-2-512. Payment by buyer before inspection. (1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this code (30-5-129(2)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of the buyer's remedies.

History: En. Sec. 2-512, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-512; amd. Sec. 3, Ch. 536, L. 1997.

Cross-References

GENERAL

Performance or acceptance under reservation of rights, 30-1-207.

Buyer's right to inspection of goods, 30-2-513.

Letters of credit, Title 30, ch. 5.

Warranty when thing cannot be examined by buyer, 30-11-217.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Financing agency, 30-2-104.
Goods, 30-2-105.
Remedy, 30-1-201.
Rights, 30-1-201.

30-2-513. Buyer's right to inspection of goods. (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (subsection (3) of 30-2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

History: En. Sec. 2-513, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-513.

Cross-References

GENERAL

Production of thing to be delivered, 28-1-1222.

Time — reasonable time — "seasonably", 30-1-204.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Exclusion or modification of warranties, 30-2-316.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's right to goods on seller's insolvency, 30-2-502.

What constitutes acceptance of goods, 30-2-606.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Revocation of acceptance in whole or in part, 30-2-608.

Buyer's incidental and consequential damages, 30-2-715.

Carriers of property — examination of shipment, 69-11-424.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Document of title, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Presumed, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Seller, 30-2-103.

Send, 30-1-201.

Term, 30-1-201.

30-2-514. When documents deliverable on acceptance — when on payment. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment.

History: En. Sec. 2-514, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-514.

Cross-References

GENERAL

Receipt for money, instrument, or property delivered, 28-1-1111.

Buyer's right to goods on seller's insolvency, 30-2-502.

Seller's shipment under reservation, 30-2-505.

Effect of seller's tender — delivery on condition, 30-2-507.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

DEFINITIONAL

Delivery, 30-1-201.

Draft, 30-3-104.

30-2-515. Preserving evidence of goods in dispute. In furtherance of the adjustment of any claim or dispute:

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

History: En. Sec. 2-515, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-515.

Cross-References

GENERAL

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.

Thing offered to be kept separate, 28-1-1223.

Prima facie evidence by third-party documents, 30-1-202.

Performance or acceptance under reservation of rights, 30-1-207.

Buyer's right to inspection of goods, 30-2-513.

Casualty to identified goods, 30-2-613.

Seller's resale including contract for resale, 30-2-706.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

Bulk transfers, Title 30, ch. 6.

DEFINITIONAL

Conform, 30-2-106.

Goods, 30-2-105.

Notification, 30-1-201.

Party, 30-1-201.

Part 6

Breach, Repudiation, and Excuse

30-2-601. Buyer's rights on improper delivery. Subject to the provisions of this chapter on breach in installment contracts (30-2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (30-2-718 and 30-2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

History: En. Sec. 2-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-601.

Cross-References

GENERAL

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Manner and effect of rightful rejection, 30-2-602.

Delivery — where made, 30-11-204.

Delivery to be within reasonable hours, 30-11-208.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Installment contract, 30-2-612.
Rights, 30-1-201.

30-2-602. Manner and effect of rightful rejection. (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (30-2-603 and 30-2-604):

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this chapter (subsection (3) of 30-2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on seller's remedies in general (30-2-703).

History: En. Sec. 2-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-602.

Cross-References

GENERAL

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.

Effect of refusal to accept performance before offer, 28-1-1304.

Time — reasonable time — "seasonably", 30-1-204.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

Improper delivery — buyer's rights, 30-2-601.

What constitutes acceptance of goods, 30-2-606.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Goods, 30-2-105.
Merchant, 30-2-104.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Remedy, 30-1-201.
Rights, 30-1-201.
Seasonably, 30-1-204.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-603. Merchant buyer's duties as to rightfully rejected goods. (1) Subject to any security interest in the buyer (subsection (3) of 30-2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10% on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

History: En. Sec. 2-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-603.

Cross-References

GENERAL

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.

Remedies to be liberally administered, 30-1-106.

Seller's resale including contract for resale, 30-2-706.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Good faith, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-604. Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instruction within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

History: En. Sec. 2-604, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-604.

Cross-References

GENERAL

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.

Manner and effect of rightful rejection, 30-2-602.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Seller's resale including contract for resale, 30-2-706.

DEFINITIONAL

Buyer, 30-2-103.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.

30-2-605. Waiver of buyer's objections by failure to particularize. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

History: En. Sec. 2-605, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-605.

Cross-References

GENERAL

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Payment by buyer before inspection, 30-2-512.

What constitutes acceptance of goods, 30-2-606.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

DEFINITIONAL

Between merchants, 30-2-104.
Buyer, 30-2-103.
Seasonably, 30-1-204.
Seller, 30-2-103.
Writing and written, 30-1-201.

30-2-606. What constitutes acceptance of goods. (1) Acceptance of goods occurs when the buyer:

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of 30-2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

History: En. Sec. 2-606, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-606.

Cross-References

GENERAL

Extinction of obligation by full performance, 28-1-1101.

Extinction when directions of creditor followed, 28-1-1104.

Passing of title — reservation for security — limited application, 30-2-401.

Risk of loss in absence of breach, 30-2-509.

Effect of breach on risk of loss, 30-2-510.

Buyer's rights on improper delivery, 30-2-601.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Buyer's options as to salvage of rightfully rejected goods, 30-2-604.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Revocation of acceptance in whole or in part, 30-2-608.

Remedies, Title 30, ch. 2, part 7.

DEFINITIONAL

Buyer, 30-2-103.

Commercial unit, 30-2-105.

Goods, 30-2-105.

Seller, 30-2-103.

30-2-607. Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for nonconformity.

(3) Where a tender has been accepted:

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over:

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of 30-2-312).

History: En. Sec. 2-607, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-607.

Cross-References

GENERAL

Time — reasonable time — "seasonably", 30-1-204.

Performance or acceptance under reservation of rights, 30-1-207.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Revocation of acceptance in whole or in part, 30-2-608.

Deduction of damages from price, 30-2-717.

Warranty when thing cannot be examined by buyer, 30-11-217.

DEFINITIONAL

Burden of establishing, 30-1-201.
Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Remedy, 30-1-201.
Seasonably, 30-1-204.

30-2-608. Revocation of acceptance in whole or in part. (1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it:

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

History: En. Sec. 2-608, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-608.

Cross-References

GENERAL

Offer of partial performance ineffective, 28-1-1203.

When party may rescind, 28-2-1711.

Time — reasonable time — "seasonably", 30-1-204.

Buyer's rights on improper delivery, 30-2-601.

Manner and effect of rightful rejection, 30-2-602.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Remedies for fraud, 30-2-721.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Goods, 30-2-105.
Lot, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-609. Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

History: En. Sec. 2-609, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-609.

Cross-References

GENERAL

Offer to be made in good faith, 28-1-1209.

Offeror to be able and willing to perform, 28-1-1210.

Obligation of good faith, 30-1-203.

Option to accelerate at will, 30-1-208.

Retraction of anticipatory repudiation, 30-2-611.

Negotiable instruments, Title 30, ch. 3.

Secured transactions — sales of accounts and chattel paper, Title 30, ch. 9.

Warranty when seller knows buyer relies on seller's statements, 30-11-213.

DEFINITIONAL

Aggrieved party, 30-1-201.

Between merchants, 30-2-104.

Contract, 30-1-201.

Contract for sale, 30-2-106.

Party, 30-1-201.

Reasonable time, 30-1-204.

Rights, 30-1-201.

Writing, 30-1-201.

30-2-610. Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (30-2-703 or 30-2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (30-2-704).

History: En. Sec. 2-610, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-610.

Cross-References

GENERAL

Effect of refusal to accept performance before offer, 28-1-1304.

When proposal may be revoked, 28-2-511.

Obligation of good faith, 30-1-203.

Right to adequate assurance of performance, 30-2-609.

"Installment contract" — breach, 30-2-612.

DEFINITIONAL

Aggrieved party, 30-1-201.

Contract, 30-1-201.

Party, 30-1-201.

Remedy, 30-1-201.

30-2-611. Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation canceled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (30-2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

History: En. Sec. 2-611, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-611.

Cross-References

GENERAL

Anticipatory repudiation, 30-2-610.

DEFINITIONAL

Aggrieved party, 30-1-201.

Cancellation, 30-2-106.

Contract, 30-1-201.

Party, 30-1-201.
Rights, 30-1-201.

30-2-612. "Installment contract" — breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

History: En. Sec. 2-612, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-612.

Cross-References

GENERAL

Breach of contract, 27-1-311.

Obligation of good faith, 30-1-203.

Course of performance or practical construction, 30-2-208.

Delivery in single lot or several lots, 30-2-307.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Right to adequate assurance of performance, 30-2-609.

Anticipatory repudiation, 30-2-610.

Retail installment sales, Title 31, ch. 1, part 2.

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Conform, 30-2-106.
Contract, 30-1-201.
Lot, 30-2-105.
Notifies, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-613. Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (30-2-324) then:

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

History: En. Sec. 2-613, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-613.

Cross-References

GENERAL

Preserving evidence of goods in dispute, 30-2-515.

Who can sue third parties for injury to goods, 30-2-722.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Fault, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-614. Substituted performance. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payments fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

History: En. Sec. 2-614, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-614.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Objections to mode of offer — waiver, 28-1-1212.

Modification of contracts, Title 28, ch. 2, part 16.

Letters of credit, Title 30, ch. 5.

DEFINITIONAL

Buyer, 30-2-103.

Fault, 30-1-201.

Party, 30-1-201.

Seller, 30-2-103.

30-2-615. Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or nondelivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

History: En. Sec. 2-615, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-615.

Cross-References

GENERAL

What conditions must be performed before requiring performance by another, 28-1-406.

When delay or failure to perform or offer to perform excused, 28-1-1301.

Effect when performance prevented by other causes, 28-1-1303.

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Unconscionable contract or clause, 30-2-302.

Output, requirements, and exclusive dealings, 30-2-306.

Right to adequate assurance of performance, 30-2-609.

Casualty to identified goods, 30-2-613.

Substituted performance, 30-2-614.

Procedure on notice claiming excuse, 30-2-616.

DEFINITIONAL

Between merchants, 30-2-104.

Buyer, 30-2-103.

Contract, 30-1-201.

Contract for sale, 30-2-106.

Good faith, 30-1-201.

Merchant, 30-2-104.

Notifies, 30-1-201.

Seasonably, 30-1-204.

Seller, 30-2-103.

30-2-616. Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (30-2-612), then also as to the whole:

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section.

History: En. Sec. 2-616, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-616.

Cross-References

GENERAL

Modification of contracts, Title 28, ch. 2, part 16.

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

Modification, rescission, and waiver, 30-2-209.

Excuse by failure of presupposed conditions, 30-2-615.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Installment contract, 30-2-612.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.
Termination, 30-2-106.
Written, 30-1-201.

Part 7

Remedies

Part Cross-References

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

30-2-701. Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this chapter.

History: En. Sec. 2-701, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-701.

Cross-References

GENERAL

Breach of contract, 27-1-311.

Breach of obligation other than contract, 27-1-317.

When several contracts taken together, 28-3-203.

DEFINITIONAL

Contract for sale, 30-2-106.
Remedy, 30-1-201.

30-2-702. Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (30-2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this chapter (30-2-403). Successful reclamation of goods excludes all other remedies with respect to them.

History: En. Sec. 2-702, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-702; amd. Sec. 6, Ch. 402, L. 1983.

Cross-References

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.

Buyer's right to goods on seller's insolvency, 30-2-502.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.

Buyer in ordinary course of business, 30-1-201.

Contract, 30-1-201.

Good faith, 30-1-201.

Goods, 30-2-105.

Insolvent, 30-1-201.

Person, 30-1-201.

Purchaser, 30-1-201.

Receipt of goods, 30-2-103.

Remedy, 30-1-201.

Rights, 30-1-201.

Seller, 30-2-103.

Writing, 30-1-201.

30-2-703. Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (30-2-612), then also with respect to the whole undelivered balance, the aggrieved seller may:

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (30-2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (30-2-706);

(e) recover damages for nonacceptance (30-2-708) or in a proper case the price (30-2-709);

(f) cancel.

History: En. Sec. 2-703, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-703.

Cross-References

GENERAL

Availability of remedies — liability, Title 27, ch. 1.

Remedies to be liberally administered, 30-1-106.

"Letter of credit" term — "confirmed credit", 30-2-325.

DEFINITIONAL

Aggrieved party, 30-1-201.

Buyer, 30-2-103.

Cancellation, 30-2-106.

Contract, 30-1-201.

Goods, 30-2-105.

Remedy, 30-1-201.

Seller, 30-2-103.

30-2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may:

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

History: En. Sec. 2-704, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-704.

Cross-References

GENERAL

Production of thing to be delivered, 28-1-1222.

Thing offered to be kept separate, 28-1-1223.

Seller's remedies in general, 30-2-703.

Seller's resale including contract for resale, 30-2-706.

DEFINITIONAL

Aggrieved party, 30-1-201.

Conforming, 30-2-106.

Contract, 30-1-201.

Goods, 30-2-105.

Rights, 30-1-201.

Seller, 30-2-103.

30-2-705. Seller's stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (30-2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History: En. Sec. 2-705, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-705.

Cross-References

GENERAL

Manner of seller's tender of delivery, 30-2-503.

Right to adequate assurance of performance, 30-2-609.

Seller's remedies in general, 30-2-703.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Buyer, 30-2-103.
Contract for sale, 30-2-106.
Document of title, 30-1-201.
Goods, 30-2-105.
Insolvent, 30-1-201.
Notification, 30-1-201.
Receipt of goods, 30-2-103.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-706. Seller's resale including contract for resale. (1) Under the conditions stated in 30-2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale:

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (30-2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of 30-2-711).

History: En. Sec. 2-706, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-706.

Cross-References

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.

Anticipatory repudiation, 30-2-610.

Seller's remedies on discovery of buyer's insolvency, 30-2-702.

Person in position of seller, 30-2-707.

Seller's damages for nonacceptance or repudiation, 30-2-708.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Good faith, 30-1-201, 30-2-103.
Goods, 30-2-105.
Merchant, 30-2-104.
Notification, 30-1-201.
Person in position of seller, 30-2-707.
Purchase, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-707. "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this chapter withhold or stop delivery (30-2-705) and resell (30-2-706) and recover incidental damages (30-2-710).

History: En. Sec. 2-707, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-707.

Cross-References

GENERAL

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Rights of financing agency, 30-2-506.

Letters of credit, Title 30, ch. 5.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Consignee, 30-7-102.
Consignor, 30-7-102.
Goods, 30-2-105.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-708. Seller's damages for nonacceptance or repudiation. (1) Subject to subsection (2) and to the provisions of this chapter with respect to proof of market price (30-2-723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this chapter (30-2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

History: **En. Sec. 2-708, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-708.**

Cross-References

GENERAL

Acceptance to be absolute, 28-2-504.

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.

Delivery "ex-ship", 30-2-322.

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

"No arrival, no sale" term, 30-2-324.

Manner of seller's tender of delivery, 30-2-503.

Action for price, 30-2-709.

Admissibility of market quotations, 30-2-724.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.

Contract, 30-1-201.

Seller, 30-2-103.

30-2-709. Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (30-2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

History: **En. Sec. 2-709, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-709.**

Cross-References

GENERAL

Remedies to be liberally administered, 30-1-106.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Risk of loss in absence of breach, 30-2-509.

Effect of breach on risk of loss, 30-2-510.

Seller's right to identify goods to contract notwithstanding breach or to salvage unfinished goods, 30-2-704.

Seller's damages for nonacceptance or repudiation, 30-2-708.

Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

DEFINITIONAL

Action, 30-1-201.

Buyer, 30-2-103.

Conforming, 30-2-106.

Contract, 30-1-201.

Goods, 30-2-105.

Seller, 30-2-103.

30-2-710. Seller's incidental damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

History: **En. Sec. 2-710, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-710.**

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

DEFINITIONAL

Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-711. Buyer's remedies in general — buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (30-2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for nondelivery as provided in this chapter (30-2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) if the goods have been identified recover them as provided in this chapter (30-2-502); or

(b) in a proper case obtain specific performance or recover the goods as provided in this chapter (30-2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (30-2-706).

History: En. Sec. 2-711, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-711.

Cross-References

GENERAL

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.

Remedies to be liberally administered, 30-1-106.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Buyer's rights on improper delivery, 30-2-601.

Revocation of acceptance in whole or in part, 30-2-608.

Buyer's damages for breach in regard to accepted goods, 30-2-714.

DEFINITIONAL

Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Contract, 30-1-201.
Cover, 30-2-712.
Goods, 30-2-105.
Notifies, 30-1-201.
Receipt of goods, 30-2-103.
Remedy, 30-1-201.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-712. "Cover" — buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (30-2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

History: En. Sec. 2-712, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-712.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Time — reasonable time — "seasonably", 30-1-204.

Seller's resale including contract for resale, 30-2-706.

Buyer's damages for nondelivery or repudiation, 30-2-713.

Buyer's right to specific performance or recovery of goods, 30-2-716.

Sale of perishable property for freightage, 69-11-411.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Purchase, 30-1-201.
Remedy, 30-1-201.
Seller, 30-2-103.

30-2-713. Buyer's damages for nondelivery or repudiation. (1) Subject to the provisions of this chapter with respect to proof of market price (30-2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (30-2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

History: En. Sec. 2-713, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-713.

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Remedies to be liberally administered, 30-1-106.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
"Cover" — buyer's procurement of substitute goods, 30-2-712.
Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Seller, 30-2-103.

30-2-714. Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of 30-2-607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

History: En. Sec. 2-714, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-714.

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Revocation of acceptance in whole or in part, 30-2-608.
Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.
Buyer's damages for nondelivery or repudiation, 30-2-713.
Buyer's incidental and consequential damages, 30-2-715.
Deduction of damages from price, 30-2-717.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Goods, 30-2-105.
Notification, 30-1-201.
Seller, 30-2-103.

30-2-715. Buyer's incidental and consequential damages. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include:

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

History: En. Sec. 2-715, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-715.

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.

Remedies to be liberally administered, 30-1-106.

Obligation of good faith, 30-1-203.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Revocation of acceptance in whole or in part, 30-2-608.

Excuse by failure of presupposed conditions, 30-2-615.

Contractual modification or limitation of remedy, 30-2-719.

DEFINITIONAL

Cover, 30-2-712.

Goods, 30-2-105.

Person, 30-1-201.

Receipt of goods, 30-2-103.

Seller, 30-2-103.

30-2-716. *(Bracketed language effective July 1, 2001)* **Buyer's right to specific performance or recovery of goods.** (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right to maintain an action for the recovery of goods identified to the contract if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. [In the case of goods bought for personal, family, or household purposes, the buyer's right to maintain an action for recovery of the goods vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.]

History: En. Sec. 2-716, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-716; amd. Sec. 136, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 inserted last sentence concerning household goods; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

GENERAL

When specific performance of obligation may be compelled, 27-1-411.

Rights of seller's creditors against sold goods, 30-2-402.

Buyer's right to goods on seller's insolvency, 30-2-502.

Action for price, 30-2-709.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Buyer, 30-2-103.

Goods, 30-2-105.

Rights, 30-1-201.

30-2-717. Deduction of damages from the price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of contract from any part of the price still due under the same contract.

History: En. Sec. 2-717, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-717.

Cross-References

GENERAL

Damages — when replacement value to be allowed, 27-1-306.

Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Buyer, 30-2-103.

Notifies, 30-1-201.

30-2-718. Liquidation or limitation of damages — deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, 20% of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (30-2-706).

History: En. Sec. 2-718, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-718.

Cross-References

GENERAL

Limitation of damages for breach of obligation, 27-1-303.

Deposit of money offered in payment, 28-1-1225.

Unconscionable contract or clause, 30-2-302.

DEFINITIONAL

Aggrieved party, 30-1-201.

Agreement, 30-1-201.

Buyer, 30-2-103.

Goods, 30-2-105.

Notice, 30-1-201.

Party, 30-1-201.

Remedy, 30-1-201.

Seller, 30-2-103.

Term, 30-1-201.

30-2-719. Contractual modification or limitation of remedy. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

History: En. Sec. 2-719, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-719.

Cross-References

GENERAL

Contracts that violate policy of law — exemption from responsibility, 28-2-702.

Restraints upon legal proceedings void, 28-2-708.

When provision fixing liquidated damages valid, 28-2-721.

Remedies to be liberally administered, 30-1-106.

Unconscionable contract or clause, 30-2-302.

Exclusion or modification of warranties, 30-2-316.

DEFINITIONAL

Agreement, 30-1-201.

Buyer, 30-2-103.

Conforming, 30-2-106.

Contract, 30-1-201.

Goods, 30-2-105.

Remedy, 30-1-201.

Seller, 30-2-103.

30-2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

History: En. Sec. 2-720, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-720.

Cross-References

GENERAL

Breach of contract, 27-1-311.

Rescission of contracts, Title 28, ch. 2, part 17.

Waiver or renunciation of claim or right after breach, 30-1-107.

DEFINITIONAL

Cancellation, 30-2-106.

Contract, 30-1-201.

30-2-721. Remedies for fraud. Remedies for material misrepresentation or fraud include all remedies available under this chapter for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

History: En. Sec. 2-721, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-721.

Cross-References

GENERAL

Kinds of fraud, 28-2-404.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

DEFINITIONAL

Contract for sale, 30-2-106.

Goods, 30-2-105.

Remedy, 30-1-201.

30-2-722. Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

History: En. Sec. 2-722, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-722.

Cross-References

GENERAL

Rights arising out of obligation transferable, 28-1-1001.

Casualty to identified goods, 30-2-613.

DEFINITIONAL

Action, 30-1-201.

Buyer, 30-2-103.

Contract for sale, 30-2-106.

Goods, 30-2-105.

Party, 30-1-201.

Rights, 30-1-201.

Security interest, 30-1-201.

30-2-723. Proof of market price — time and place. (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (30-2-708 or 30-2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

History: En. Sec. 2-723, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-723.

Cross-References

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Party, 30-1-201.
Reasonable time, 30-1-204.
Usage of trade, 30-1-205.

30-2-724. Admissibility of market quotations. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

History: En. Sec. 2-724, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-724.

Cross-References

GENERAL

Relevant evidence generally admissible, Rule 402, M.R.Ev. (see Title 26, ch. 10).
Proof of market price — time and place, 30-2-723.

DEFINITIONAL

Goods, 30-2-105.

30-2-725. Statute of limitations in contracts for sale. (1) An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this code becomes effective.

History: En. Sec. 2-725, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-725.

Cross-References

GENERAL

Statute of limitations — actions based on contract or other obligation, 27-2-202.

Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Agreement, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Term, 30-1-201.
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CHAPTER 2A

UNIFORM COMMERCIAL CODE LEASES

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Part 1

General Provisions

30-2A-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Leases.

History: En. Sec. 7, Ch. 410, L. 1991.

30-2A-102. Scope. This chapter applies to any transaction, regardless of form, that creates a lease.

History: En. Sec. 8, Ch. 410, L. 1991.

30-2A-103. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to the buyer is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

(II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (30-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person, who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "Accessions". 30-2A-310(1).
(b) "Construction mortgage". 30-2A-309(1)(d).
(c) "Encumbrance". 30-2A-309(1)(e).
(d) "Fixtures". 30-2A-309(1)(a).
(e) "Fixture filing". 30-2A-309(1)(b).
(f) "Purchase money lease". 30-2A-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

(a) "Account". [30-9-106] 30-9-122(1)(b).
(b) "Between merchants". 30-2-104(3).
(c) "Buyer". 30-2-103(1)(a).
(d) "Chattel paper". [30-9-105(1)(b)] 30-9-122(1)(k).
(e) "Consumer goods". [30-9-109(1)] 30-9-122(1)(w).
(f) "Document". [30-9-105(1)(f)] 30-9-122(1)(dd).
(g) "Entrusting". 30-2-403(3).
(h) "General intangible". [30-9-106] 30-9-122(1)(pp).
(i) "Good faith". 30-2-103(1)(b).
(j) "Instrument". [30-9-105(1)(i)] 30-9-122(1)(uu).
(k) "Merchant". 30-2-104(1).
(l) "Mortgage". [30-9-105(1)(j)] 30-9-122(1)(ccc).
(m) "Pursuant to commitment". 30-9-105(1)(k).
(n) "Receipt". 30-2-103(1)(c).
(o) "Sale". 30-2-106(1).
(p) "Sale on approval". 30-2-326.
(q) "Sale or return". 30-2-326.
(r) "Seller". 30-2-103(1)(d).

(4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this chapter. *(Bracketed references deleted July 1, 2001.)*

History: En. Sec. 9, Ch. 410, L. 1991; amd. Sec. 137, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 in (3) in reference to "account" substituted "30-9-122(1)(b)" for "30-9-106", in reference to "chattel paper" substituted "30-9-122(1)(k)" for "30-9-105(1)(b)", in reference to "consumer goods" substituted "30-9-122(1)(w)" for "30-9-109(1)", in reference to "document" substituted "30-9-122(1)(dd)" for "30-9-105(1)(f)", in reference to "general intangible" substituted "30-9-122(1)(pp)" for "30-9-106", in reference to "instrument" substituted "30-9-122(1)(uu)" for "30-9-105(1)(i)", and in reference to "mortgage" substituted "30-9-122(1)(ccc)" for "30-9-105(1)(j)"; and made minor changes in style. Amendment effective July 1, 2001.

30-2A-104. Leases subject to other law. (1) A lease, although subject to this chapter, is also subject to any applicable:

(a) certificate of title statute of this state;

(b) certificate of title statute of another jurisdiction (30-2A-105); or

(c) consumer protection statute of this state or final consumer protection decision of a court of this state existing on October 1, 1991.

(2) In case of conflict between this chapter, other than 30-2A-105, 30-2A-304(3), and 30-2A-305(3), and a statute or decision referred to in subsection (1) of this section, the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

History: En. Sec. 10, Ch. 410, L. 1991.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Certificates of ownership — motor vehicles, Title 61, ch. 3.

30-2A-105. Territorial application of chapter to goods covered by certificate of title. Subject to the provisions of 30-2A-304(3) and 30-2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of:

(1) surrender of the certificate; or

(2) 4 months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

History: En. Sec. 11, Ch. 410, L. 1991.

Cross-References

Montana Procurement Act — application, 18-4-132.

Territorial Application of Code — parties' power to choose applicable law, 30-1-105.

30-2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum. (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

History: En. Sec. 12, Ch. 410, L. 1991.

30-2A-107. Waiver or renunciation of claim or right after default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

History: **En. Sec. 13, Ch. 410, L. 1991.**

30-2A-108. Unconscionability. (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) if the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney fees to the lessee;

(b) if the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable attorney fees to the party against whom the claim is made;

(c) in determining attorney fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

History: **En. Sec. 14, Ch. 410, L. 1991.**

Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

30-2A-109. Option to accelerate at will. (1) A term providing that one party or his successor in interest may accelerate payment of performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

History: **En. Sec. 15, Ch. 410, L. 1991.**

Part 2

Formation and Construction of Lease Contract

Part Cross-References

General definitions and principles of interpretation, Title 30, ch. 1, part 2.

Plain language in contracts, Title 30, ch. 14, part 11.

30-2A-201. Statute of frauds. (1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(b) there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

History: En. Sec. 16, Ch. 410, L. 1991.

Cross-References

What contracts must be writing 28-2-903.

30-2A-202. Final written expression — parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) by course of dealing or usage of trade or by course of performance; and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

History: En. Sec. 17, Ch. 410, L. 1991.

Cross-References

When extrinsic evidence concerning written agreement may be considered, 28-2-905.

30-2A-203. Seals inoperative. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument, and the law with respect to sealed instruments does not apply to the lease contract or offer.

History: En. Sec. 18, Ch. 410, L. 1991.

30-2A-204. Formation in general. (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties that recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

History: En. Sec. 19, Ch. 410, L. 1991.

Cross-References

Montana Procurement Act — contract clauses, 18-4-224.

30-2A-205. Firm offers. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

History: En. Sec. 20, Ch. 410, L. 1991.

30-2A-206. Offer and acceptance in formation of lease contract. (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

History: En. Sec. 21, Ch. 410, L. 1991.

30-2A-207. Course of performance or practical construction. (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of 30-2A-208 on modification and waiver, course of performance is relevant to show a modification or waiver of any term inconsistent with the course of performance.

History: En. Sec. 22, Ch. 410, L. 1991.

30-2A-208. Modification, rescission, and waiver. (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the

retraction would be unjust in view of a material change of position in reliance on the waiver.

History: **En. Sec. 23, Ch. 410, L. 1991.**

Cross-References

Modification of contracts, Title 28, Ch. 2, part 16.

Rescission of contracts, Title 28, ch. 2, part 17.

30-2A-209. Lessee under finance lease as beneficiary of supply contract. (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee provided for under subsection (1) does not:

(a) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise; or

(b) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless before the modification or rescission the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is considered to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier that arise from an agreement between the lessee and the supplier or under other law.

History: **En. Sec. 24, Ch. 410, L. 1991.**

30-2A-210. Express warranties. (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee that relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods that is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

History: **En. Sec. 25, Ch. 410, L. 1991.**

Cross-References

Wheelchairs, Title 30, ch. 14, part 12.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

Title warranty of livestock sold, 81-8-233.

30-2A-211. Warranties against interference and against infringement — lessee's obligation against infringement. (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, that will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease, there is in a lease contract by a lessor, who is a merchant regularly dealing in goods of the kind, a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

History: En. Sec. 26, Ch. 410, L. 1991.

30-2A-212. Implied warranty of merchantability. (1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the description in the lease agreement;

(b) in the case of fungible goods, are of fair average quality within the description;

(c) are fit for the ordinary purposes for which goods of that type are used;

(d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

History: En. Sec. 27, Ch. 410, L. 1991.

30-2A-213. Implied warranty of fitness for particular purpose. Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

History: En. Sec. 28, Ch. 410, L. 1991.

30-2A-214. Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed whenever reasonable as consistent with each other; but, subject to the provisions of 30-2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it, the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness, the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous, and states, for example, "There is no warranty that the goods will be fit for a particular purpose".

(3) Notwithstanding subsection (2), but subject to subsection (4):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions, such as "as is" or "with all faults", or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (30-2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

History: En. Sec. 29, Ch. 410, L. 1991.

30-2A-215. Cumulation and conflict of warranties express or implied. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention, the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

History: En. Sec. 30, Ch. 410, L. 1991.

30-2A-216. Third-party beneficiaries of express and implied warranties. A warranty to or for the benefit of a lessee under this chapter, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

History: En. Sec. 31, Ch. 410, L. 1991.

30-2A-217. Identification. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(1) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(2) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(3) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

History: En. Sec. 32, Ch. 410, L. 1991.

30-2A-218. Insurance and proceeds. (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

History: En. Sec. 33, Ch. 410, L. 1991.

30-2A-219. Risk of loss. (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this chapter on the effect of default on risk of loss (30-2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier, but if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (2)(a) or (2)(b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor or, in the case of a finance lease, the supplier is a merchant; otherwise the risk passes to the lessee on tender of delivery.

History: En. Sec. 34, Ch. 410, L. 1991.

30-2A-220. Effect of default on risk of loss. (1) When risk of loss is to pass to the lessee and the time of passage is not stated:

(a) if a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor or, in the case of a finance lease, the supplier until cure or acceptance.

(b) if the lessee rightfully revokes acceptance, he, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor or, in the case of a finance lease, the supplier, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as resting on the lessee for a commercially reasonable time.

History: En. Sec. 35, Ch. 410, L. 1991.

30-2A-221. Casualty to identified goods. If a lease contract requires goods identified when the lease contract is made and the goods suffer casualty without fault of the lessee, the lessor, or the supplier before delivery or if the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or 30-2A-219, then:

(1) if the loss is total, the lease contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

History: **En. Sec. 36, Ch. 410, L. 1991.**

Part 3

Effect of Lease Contract

Part Cross-References

Contracts and Other Obligations, Title 28.

30-2A-301. Enforceability of lease contract. Except as otherwise provided in this chapter, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods, and against creditors of the parties.

History: **En. Sec. 37, Ch. 410, L. 1991.**

30-2A-302. Title to and possession of goods. Except as otherwise provided in this chapter, each provision of this chapter applies whether the lessor or a third party has title to the goods and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

History: **En. Sec. 38, Ch. 410, L. 1991.**

30-2A-303. *(Temporary)* **Alienability of party's interest under lease contract or of lessor's residual interest in goods — delegation of performance — transfer of rights.** (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Title 30, chapter 9, secured transactions, by reason of 30-9-102(1)(b).

(2) Except as provided in subsections (3) and (4), a provision in a lease agreement that prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods or that makes such a transfer an event of default gives rise to the rights and remedies provided in subsection (5), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) (a) A provision in a lease agreement that prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods or that makes such a transfer an event of default is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision.

(b) Neither the granting nor the enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement that prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment

arising out of the transferor's due performance of the transferor's entire obligation or that makes such a transfer an event of default is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract within the purview of subsection (5).

(5) Subject to subsections (3) and (4):

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in 30-2A-501;

(b) if subsection (5)(a) is not applicable and if a transfer is made that is prohibited under a lease agreement or that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract:

(i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer; and

(ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6) A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms is a transfer of rights, and unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

30-2A-303. *(Effective July 1, 2001)* **Alienability of party's interest under lease contract or of lessor's residual interest in goods — delegation of performance — transfer of rights.** (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Title 30, chapter 9, secured transactions, by reason of 30-9-129(1)(c).

(2) Except as provided in 30-9-447 and subsection (3) of this section, a provision in a lease agreement that prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods or that makes such a transfer an event of default gives rise to the rights and remedies provided in subsection (4), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement that prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation or that makes such a transfer an event of default is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return

performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract within the purview of subsection (4).

(4) Subject to 30-9-447 and subsection (3) of this section:

(a) if a transfer is made that is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in 30-2A-501;

(b) if subsection (4)(a) is not applicable and if a transfer is made that is prohibited under a lease agreement or that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract:

(i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer; and

(ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms is a transfer of rights, and unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

History: En. Sec. 39, Ch. 410, L. 1991; amd. Sec. 138, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 at end of (1) substituted "30-9-129(1)(c)" for "30-9-102(1)(b)"; in exception clause in (2) inserted reference to 30-9-447; deleted former (3) that read: "(3)(a) A provision in a lease agreement that prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods or that makes such a transfer an event of default is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision.

(b) Neither the granting nor the enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor"; in (4) inserted reference to 30-9-447; and made minor changes in style. Amendment effective July 1, 2001.

30-2A-304. Subsequent lease of goods by lessor. (1) Subject to 30-2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer and, except as provided in 30-2A-527(4) and subsection (2) of this section, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) the lessor's transferor was deceived as to the identity of the lessor;

(b) the delivery was in exchange for a check that is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

History: En. Sec. 40, Ch. 410, L. 1991.

30-2A-305. Sale or sublease of goods by lessee. (1) Subject to the provisions of 30-2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer and, except as provided in 30-2A-511(4) and subsection (2) of this section, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease, the lessee has that power even though:

(a) the lessor was deceived as to the identity of the lessee;

(b) the delivery was in exchange for a check that is later dishonored; or

(c) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

History: En. Sec. 41, Ch. 410, L. 1991.

30-2A-306. Priority of certain liens arising by operation of law. If a person in the ordinary course of business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

History: En. Sec. 42, Ch. 410, L. 1991.

Cross-References

Liens, Title 71, ch. 3.

30-2A-307 . *(Temporary)* **Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.** (1) Except as otherwise provided in 30-2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in 30-2A-306, 30-2A-308, and subsections (3) and (4) of this section, a creditor of a lessor takes subject to the lease contract unless:

(a) the creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) the creditor holds a security interest in the goods that was perfected (30-9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (30-9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever occurs first, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

30-2A-307. *(Effective July 1, 2001)* **Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.** (1) Except as otherwise provided in 30-2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in 30-2A-306, 30-2A-308, and subsection (3) of this section, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in 30-9-337, 30-9-341, and 30-9-343, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

History: En. Sec. 43, Ch. 410, L. 1991; amd. Sec. 139, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 deleted former (2)(b) and (2)(c) that read: "(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) the creditor holds a security interest in the goods that was perfected (30-9-303) before the lease contract became enforceable"; deleted former (3) and (4) that read: "(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (30-9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever occurs first, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period"; inserted (3) concerning lessee subject to security interest held by lessor's creditor; and made minor changes in style. Amendment effective July 1, 2001.

30-2A-308. Special rights of creditors. (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract:

(a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like; and

(b) is made under circumstances that under any statute or rule of law apart from this chapter would constitute the transaction as a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

History: En. Sec. 44, Ch. 410, L. 1991.

30-2A-309. Lessor's and lessee's rights when goods become fixtures. (1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of [30-9-402(5)] 30-9-522(1) and (2);

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this chapter, a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable;

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding the provisions of subsection (4)(a) but otherwise subject to the provisions of subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the provisions of subsections (1) through (6), priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this chapter or if necessary to enforce other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate. However, the lessor or lessee shall reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the chapter on secured transactions (Title 30, chapter 9). *(Bracketed reference deleted July 1, 2001.)*

History: En. Sec. 45, Ch. 410, L. 1991; amd. Sec. 140, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 at end of (1)(b) substituted "30-9-522(1) and (2)" for "30-9-402(5)". Amendment effective July 1, 2001.

30-2A-310. Lessor's and lessee's rights when goods become accessions. (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently

acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of:

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) and (4) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter or if necessary to enforce his other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

History: En. Sec. 46, Ch. 410, L. 1991.

30-2A-311. Priority subject to subordination. Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

History: En. Sec. 47, Ch. 410, L. 1991.

Part 4

Performance of Lease Contract Repudiated, Substituted, and Excused

Part Cross-References

Performance, offer of performance, and prevention of performance, Title 28, ch. 1, parts 11 through 13.

30-2A-401. Insecurity — adequate assurance of performance. (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable, the insecure party may suspend any performance for which he has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

History: En. Sec. 48, Ch. 410, L. 1991.

30-2A-402. Anticipatory repudiation. If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(1) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(2) make demand pursuant to 30-2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(3) resort to any right or remedy upon default under the lease contract or this chapter, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this chapter on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (30-2A-524).

History: En. Sec. 49, Ch. 410, L. 1991.

30-2A-403. Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under 30-2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

History: En. Sec. 50, Ch. 410, L. 1991.

30-2A-404. Substituted performance. (1) If without fault of the lessee, the lessor, and the supplier the agreed berthing, loading, or unloading facilities fail, the agreed type of carrier becomes unavailable, or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent and if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

History: En. Sec. 51, Ch. 410, L. 1991.

30-2A-405. Excused performance. Subject to 30-2A-404 on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or

domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in subsection (1) affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and, in the case of a finance lease, the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (2), of the estimated quota thus made available for the lessee.

History: En. Sec. 52, Ch. 410, L. 1991.

30-2A-406. Procedure on excused performance. (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under 30-2A-405, the lessee may by written notification to the lessor as to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (30-2A-510):

(a) terminate the lease contract (30-2A-505(2)); or

(b) except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under 30-2A-402, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

History: En. Sec. 53, Ch. 410, L. 1991.

30-2A-407. Irrevocable promises — finance leases. (1) In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1):

(a) is effective and enforceable between the parties and by or against third parties, including assignees of the parties; and

(b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

History: En. Sec. 54, Ch. 410, L. 1991.

Part 5

Default

Part Cross-References

Remedies to be liberally administered, 30-1-106.

30-2A-501. Default — procedure. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this chapter.

(4) Except as otherwise provided in 30-1-106(1), this chapter, or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

History: En. Sec. 55, Ch. 410, L. 1991.

30-2A-502. Notice after default. Except as otherwise provided in this chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

History: En. Sec. 56, Ch. 410, L. 1991.

30-2A-503. Modification or impairment of rights and remedies. (1) Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter.

(2) Resort to a remedy provided under this chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this chapter.

(3) Consequential damages may be liquidated under 30-2A-504 or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable, but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this chapter.

History: En. Sec. 57, Ch. 410, L. 1991.

30-2A-504. Liquidation of damages. (1) Damages payable by either party for default or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to a lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages and such provision does not comply with subsection (1) or if such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (30-2A-525 or 30-2A-526), the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, 20% of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term or, in the case of a consumer lease, the lesser of such amount or $500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1) of this section; and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

History: En. Sec. 58, Ch. 410, L. 1991.

30-2A-505. Cancellation and termination — effect of cancellation, termination, rescission, or fraud on rights and remedies. (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation", "rescission", or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this chapter for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be considered inconsistent with a claim for damages or other right or remedy.

History: En. Sec. 59, Ch. 410, L. 1991.

30-2A-506. Statute of limitations. (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within 4 years after the cause of action accrued. By the original lease contract, the parties may reduce the period of limitation to not less than 1 year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations, nor does it apply to causes of action that have accrued before this chapter becomes effective.

History: En. Sec. 60, Ch. 410, L. 1991.

30-2A-507. Proof of market rent — time and place. (1) Damages based on market rent (30-2A-519 or 30-2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term that in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

History: En. Sec. 61, Ch. 410, L. 1991.

30-2A-508. Lessee's remedies. (1) If a lessor fails to deliver the goods in conformity to the lease contract (30-2A-509) or repudiates the lease contract (30-2A-402) or if a lessee rightfully rejects the goods (30-2A-509) or justifiably revokes acceptance of the goods (30-2A-517), then with respect to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (30-2A-510), the lessor is in default under the lease contract and the lessee may:

(a) cancel the lease contract (30-2A-505(1));

(b) recover so much of the rent and security as has been paid and is just under the circumstances;

(c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (30-2A-518 and 30-2A-520) or recover damages for nondelivery (30-2A-519 and 30-2A-520);

(d) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) if the goods have been identified, recover them (30-2A-522); or

(b) in a proper case, obtain specific performance or replevy the goods (30-2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in 30-2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (30-2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to 30-2A-527(5).

(6) Subject to the provisions of 30-2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

History: En. Sec. 62, Ch. 410, L. 1991.

30-2A-509. Lessee's rights on improper delivery — rightful rejection. (1) Subject to the provisions of 30-2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

History: En. Sec. 63, Ch. 410, L. 1991.

30-2A-510. Installment lease contracts — rejection and default. (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole, there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

History: En. Sec. 64, Ch. 410, L. 1991.

30-2A-511. Merchant lessee's duties as to rightfully rejected goods. (1) Subject to any security interest of a lessee (30-2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1) of this section) or any other lessee (30-2A-512) disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade or, if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.

(3) In complying with 30-2A-512 or this section, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to 30-2A-512 or this section takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter.

History: En. Sec. 65, Ch. 410, L. 1991.

30-2A-512. Lessee's duties as to rightfully rejected goods. (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (30-2A-511) and subject to any security interest of a lessee (30-2A-508(5)):

(a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account, ship them to the lessor or the supplier, or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in 30-2A-511; but

(c) the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

History: **En. Sec. 66, Ch. 410, L. 1991.**

30-2A-513. Cure by lessor of improper tender or delivery — replacement. (1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee.

History: **En. Sec. 67, Ch. 410, L. 1991.**

30-2A-514. Waiver of lessee's objections. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (30-2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

History: **En. Sec. 68, Ch. 410, L. 1991.**

30-2A-515. Acceptance of goods. (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) the lessee fails to make an effective rejection of the goods (30-2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

History: **En. Sec. 69, Ch. 410, L. 1991.**

30-2A-516. Effect of acceptance of goods — notice of default — burden of establishing default after acceptance — notice of claim or litigation to person answerable over. (1) A lessee shall pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance may not be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance may not be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this chapter or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (30-2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend, that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation, including settlement if the claim is one for infringement or the like (30-2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control, the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (30-2A-211).

History: En. Sec. 70, Ch. 410, L. 1991.

30-2A-517. Revocation of acceptance of goods. (1) A lessee may revoke acceptance of a lot or commercial unit the nonconformity of which substantially impairs its value to the lessee if the lessee has accepted it:

(a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods that is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

History: En. Sec. 71, Ch. 410, L. 1991.

30-2A-518. Cover — substitute goods. (1) After a default by a lessor under the lease contract of the type described in 30-2A-508(1) or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of

the parties (30-1-102(3) and 30-2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and 30-2A-519 governs.

History: **En. Sec. 72, Ch. 410, L. 1991.**

30-2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and 30-2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under 30-2A-518(2) or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (30-2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

History: **En. Sec. 73, Ch. 410, L. 1991.**

30-2A-520. Lessee's incidental and consequential damages. (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked; any commercially reasonable charges; expenses or commissions in connection with effecting cover; and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and that could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

History: En. Sec. 74, Ch. 410, L. 1991.

30-2A-521. Lessee's right to specific performance or replevin. (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court considers just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

History: En. Sec. 75, Ch. 410, L. 1991.

30-2A-522. Lessee's right to goods on lessor's insolvency. (1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (30-2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

History: En. Sec. 76, Ch. 410, L. 1991.

30-2A-523. Lessor's remedies. (1) If a lessee wrongfully rejects or revokes acceptance of goods, fails to make a payment when due, or repudiates with respect to a part or the whole, then with respect to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (30-2A-510), the lessee is in default under the lease contract and the lessor may:

(a) cancel the lease contract (30-2A-505(1));

(b) proceed respecting goods not identified to the lease contract (30-2A-524);

(c) withhold delivery of the goods and take possession of goods previously delivered (30-2A-525);

(d) stop delivery of the goods by any bailee (30-2A-526);

(e) dispose of the goods and recover damages (30-2A-527), retain the goods and recover damages (30-2A-528), or in a proper case, recover rent (30-2A-529);

(f) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2); or

(b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

History: En. Sec. 77, Ch. 410, L. 1991.

30-2A-524. Lessor's right to identify goods to lease contract. (1) If a lessee under a lease contract defaults as described in 30-2A-523 or, if agreed, after other default by the lessee, a lessor may:

(a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) dispose of goods (30-2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

History: En. Sec. 78, Ch. 410, L. 1991.

30-2A-525. Lessor's right to possession of goods. (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in 30-2A-523(1) or (3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor that is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business and may dispose of goods on the lessee's premises (30-2A-527).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

History: En. Sec. 79, Ch. 410, L. 1991.

30-2A-526. Lessor's stoppage of delivery in transit or otherwise. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History: En. Sec. 80, Ch. 410, L. 1991.

30-2A-527. Lessor's rights to dispose of goods. (1) After a default by a lessee under the lease contract described in 30-2A-523(1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (30-2A-525 or 30-2A-526) or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and 30-2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(a) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

(b) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement; and

(c) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and 30-2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (30-2A-508(5)).

History: En. Sec. 81, Ch. 410, L. 1991.

30-2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and 30-2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under 30-2A-527(2) or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in 30-2A-523(1) or (3)(a) or, if agreed, for other default of the lessee:

(a) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;

(b) the present value as of the date determined under subsection (1)(a) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located, computed for the same lease term; and

(c) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, that the lessor

would have made from full performance by the lessee, together with any incidental damages allowed under 30-2A-530, allowance due for costs reasonably incurred, and credit due for payments or proceeds of disposition.

History: **En. Sec. 82, Ch. 410, L. 1991.**

30-2A-529. Lessor's action for rent. (1) After default by the lessee under the lease contract of the type described in 30-2A-523(1) or (3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (30-2A-219):

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing:

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by 30-2A-527 or 30-2A-528 and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to 30-2A-527 or 30-2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) If a lessee under a lease contract defaults as described in 30-2A-523(1) or (3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under 30-2A-527 or 30-2A-528.

History: **En. Sec. 83, Ch. 410, L. 1991.**

30-2A-530. Lessor's incidental damages. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery; in the transportation, care, and custody of goods after the lessee's default; in connection with return or disposition of the goods; or otherwise resulting from the default.

History: **En. Sec. 84, Ch. 410, L. 1991.**

30-2A-531. Standing to sue third parties for injury to goods. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

(a) the lessor has a right of action against the third party; and

(b) the lessee also has a right of action against the third party if the lessee:

(i) has a security interest in the goods;

(ii) has an insurable interest in the goods; or

(iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his suit or settlement, subject to his own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

History: En. Sec. 85, Ch. 410, L. 1991.

30-2A-532. Lessor's rights to residual interest. In addition to any other recovery permitted by this chapter or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

History: En. Sec. 86, Ch. 410, L. 1991.

CHAPTER 3

UNIFORM COMMERCIAL CODE NEGOTIABLE INSTRUMENTS

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(Repealed. Sec. 230, Ch. 410, L. 1991)

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(Repealed. Sec. 230, Ch. 410, L. 1991)

Chapter Cross-References

Uniform Commercial Code — leases, Title 30, ch. 2A.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Investment securities, Title 30, ch. 8.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

Part 1

Short Title, Form, and Interpretation

30-3-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Negotiable Instruments.

History: En. Sec. 3-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-101; amd. Sec. 87, Ch. 410, L. 1991.

30-3-102. Definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Acceptor" means a drawee that has accepted a draft.

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person that signs a draft as a person ordering payment.

(d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(e) "Maker" means a person that signs a note as promisor of payment.

(f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which that person is located, with respect to the business in which that person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 4.

(h) "Party" means party to an instrument.

(i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact (30-1-201(8)).

(k) "Remitter" means a person that purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". 30-3-410.
"Accommodated party". 30-3-415.
"Accommodation party". 30-3-415.
"Alteration". 30-3-407.
"Anomalous indorsement". 30-3-204.
"Blank indorsement". 30-3-204.
"Cashier's check". 30-3-104.
"Certificate of deposit". 30-3-104.
"Certified check". 30-3-410.
"Check". 30-3-104.
"Consideration". 30-3-303.
"Draft". 30-3-104.
"Fiduciary". 30-3-308.
"Holder in due course". 30-3-302.
"Incomplete instrument". 30-3-115.
"Indorsement". 30-3-203.
"Indorser". 30-3-203.
"Instrument". 30-3-104.
"Issue". 30-3-125.
"Issuer". 30-3-125.
"Negotiable instrument". 30-3-104.
"Negotiation". 30-3-202.
"Note". 30-3-104.
"Payable at a definite time". 30-3-109.
"Payable on demand". 30-3-108.
"Payable to bearer". 30-3-111.
"Payable to order". 30-3-111.
"Payment". 30-3-603.
"Person entitled to enforce". 30-3-301.
"Presentment". 30-3-504.
"Reacquisition". 30-3-208.
"Represented person". 30-3-308.
"Special indorsement". 30-3-204.
"Teller's check". 30-3-104.
"Transfer of instrument". 30-3-210.
"Traveler's check". 30-3-104.
"Value". 30-3-303.

(3) The following definitions in other chapters apply to this chapter:

"Bank". 30-4-105.
"Banking day". 30-4-104.
"Clearinghouse". 30-4-104.
"Collecting bank". 30-4-105.
"Customer". 30-4-104.
"Depositary bank". 30-4-105.

"Documentary draft". 30-4-104.
"Intermediary bank". 30-4-105.
"Item". 30-4-104.
"Payor bank". 30-4-105.
"Suspends payments". 30-4-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 3-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-102; amd. Sec. 89, Ch. 410, L. 1991.

Cross-References

GENERAL

How presentment made, 30-3-504.

DEFINITIONAL

Bank, 30-1-201.
Delivery, 30-1-201.
Holder, 30-1-201.
Money, 30-1-201.
Person, 30-1-201.

30-3-103. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-103.

30-3-104. Negotiable instrument. (1) "Negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(a) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(b) is payable on demand or at a definite time; and

(c) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money except that the promise or order may contain:

(i) an undertaking or power to give, maintain, or protect collateral to secure payment;

(ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral; or

(iii) a waiver of the benefit of any law intended for the advantage or protection of any obligor.

(2) "Instrument" means a negotiable instrument.

(3) An order that meets all of the requirements of subsection (1) except subsection (1)(a) and otherwise falls within the definition of "check" in subsection (6) is a negotiable instrument and a check.

(4) Notwithstanding the provisions of subsection (1), a promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, indicating that the writing is not an instrument governed by this chapter.

(5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both note and draft, the person entitled to enforce the instrument may treat it as either.

(6) (a) "Check" means:

(i) a draft, other than a documentary draft, payable on demand and drawn on a bank; or

(ii) a cashier's check or teller's check.

(b) An instrument may be a check even though it is described on its face by another term, such as "money order".

(7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(8) "Teller's check" means a draft drawn by a bank:

(a) on another bank; or

(b) payable at or through a bank.

(9) "Traveler's check" means an instrument that:

(a) is payable on demand;

(b) is drawn on or payable at or through a bank;

(c) is designated by the term traveler's check or by a substantially similar term; and

(d) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(10) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

History: En. Sec. 3-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-104; amd. Sec. 90, Ch. 410, L. 1991.

Cross-References

GENERAL

Payment of taxes by negotiable instrument, 15-1-421.

When promise or order unconditional, 30-3-105.

Money, 30-3-107.

Payable on demand, 30-3-108.

Definite time, 30-3-109.

Payable to bearer, 30-3-111.

Signature, 30-3-401.

Signature by authorized representative, 30-3-403.

DEFINITIONAL

Bank, 30-1-201.

Bearer, 30-1-201.

Definite time, 30-3-109.

Money, 30-1-201.

On demand, 30-3-108.

Order, 30-3-102.

Promise, 30-3-102.

Signed, 30-1-201.

Term, 30-1-201.

Writing, 30-1-201.

30-3-105. Unconditional promise or order. (1) (a) Except as provided in subsections (2) and (3), for the purposes of 30-3-104(1), a promise or order is unconditional unless it states:

(i) an express condition to payment; or

(ii) that the promise or order is subject to or governed by another writing or that the rights or obligations with respect to the promise or order are stated in another writing.

(b) A mere reference to another writing does not make the promise or order conditional.

(2) A promise or order is not made conditional:

(a) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration; or

(b) because payment is limited to or resorts to a particular fund or source.

(3) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of 30-3-104(1). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(4) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of 30-3-104(1), but there cannot be a holder in due course of the promise or order.

History: En. Sec. 3-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-105; amd. Sec. 92, Ch. 410, L. 1991.

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

DEFINITIONAL

Account, 30-4-104.

Agreement, 30-1-201.

Instrument, 30-3-102.

Issue, 30-3-102.

Order, 30-3-102.

Promise, 30-3-102.

30-3-106. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-106.

30-3-107. Instrument payable in foreign money. Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

History: En. Sec. 3-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-107; amd. Sec. 93, Ch. 410, L. 1991.

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — note, 30-3-104.

Right of charge-back or refund, 30-4-212.

DEFINITIONAL

Instrument, 30-3-102.

Money, 30-1-201.

Order, 30-3-102.

Promise, 30-3-102.

Purchase, 30-1-201.

30-3-108. Payable on demand. A promise or order is "payable on demand" if:

(1) it states that it is payable on demand or at sight or otherwise indicates that it is payable at the will of the holder; or

(2) it does not state any time of payment.

History: En. Sec. 3-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-108; amd. Sec. 94, Ch. 410, L. 1991.

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Holder in due course, 30-3-302.

DEFINITIONAL

Instrument, 30-3-102.

30-3-109. Definite time. (1) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to the rights of:

(a) prepayment;

(b) acceleration;

(c) extension at the option of the holder; or

(d) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

History: En. Sec. 3-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-109; amd. Sec. 95, Ch. 410, L. 1991.

Cross-References

GENERAL

Option to accelerate at will, 30-1-208.

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Incomplete instruments, 30-3-115.

Notice to purchaser, 30-3-304.

DEFINITIONAL

Holder, 30-1-201.

Instrument, 30-3-102.

Term, 30-1-201.

30-3-110. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-110.

30-3-111. Payable to bearer or to order. (1) A promise or order is "payable to bearer" if it:

(a) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(b) does not state a payee; or

(c) states that it is payable to or to the order of "cash" or otherwise indicates that it is not payable to an identified person.

(2) A promise or order that is not payable to bearer is "payable to order" if it is payable to the order of an identified person or to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(3) An instrument payable to bearer may become payable to an identified person if it is specially indorsed as stated in 30-3-204(1). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank as stated in 30-3-204(2).

History: En. Sec. 3-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-111; amd. Sec. 96, Ch. 410, L. 1991.

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Incomplete instruments, 30-3-115.

Special endorsement — blank endorsement, 30-3-204.

Impostors — signature in name of payee, 30-3-405.

DEFINITIONAL

Bearer, 30-1-201.

Instrument, 30-3-102.

Person, 30-1-201.

Term, 30-1-201.

30-3-112. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-112.

30-3-113. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-113.

30-3-114. Date of instrument. (1) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in 30-4-401(3), an instrument payable on demand is not payable before the date of the instrument.

(2) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

History: En. Sec. 3-114, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-114; amd. Sec. 100, Ch. 410, L. 1991.

Cross-References

GENERAL

Definite time, 30-3-109.

Incomplete instruments, 30-3-115.

Rights of one not holder in due course, 30-3-306.

Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Instrument, 30-3-102.

Issue, 30-3-102.

On demand, 30-3-108.

Presumed, 30-1-201.

Signature, 30-3-401.

30-3-115. Incomplete instrument. (1) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(2) Subject to subsection (3), if an incomplete instrument is an instrument under 30-3-104, it may be enforced according to its terms if it is not completed or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under 30-3-104 but, after completion, the requirements of 30-3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(3) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument governed by 30-3-407.

(4) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

History: En. Sec. 3-115, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-115; amd. Sec. 102, Ch. 410, L. 1991.

Cross-References

GENERAL

Payment on demand, 30-3-108.
Date — antedating — postdating, 30-3-114.
Rights of holder in due course, 30-3-305.
Signature, 30-3-401.
Contract of maker, drawer, and acceptor, 30-3-413.

DEFINITIONAL

Alteration, 30-3-407.
Burden of establishing, 30-1-201.
Delivery, 30-1-201.
Instrument, 30-3-102.
Party, 30-1-201.
Signed, 30-1-201.

30-3-116. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-116, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-116.

30-3-117. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-117, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-117.

30-3-118. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-118, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-118.

30-3-119. Other agreements affecting instrument. Subject to applicable law regarding exclusion of proof of contemporaneous or prior agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

History: En. Sec. 3-119, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-119; amd. Sec. 104, Ch. 410, L. 1991.

Cross-References

GENERAL

When promise or order unconditional, 30-3-105.
Notice to purchaser, 30-3-304.

DEFINITIONAL

Agreement, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Notice, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Written and writing, 30-1-201.

30-3-120. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-120, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-120.

30-3-121. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-121, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-121.

30-3-122. Statute of limitations. (1) Except as provided in subsection (5), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the payment date or dates stated in the note or, if a payment date is accelerated, within 6 years after the accelerated payment date.

(2) Except as provided in subsection (4) or (5), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(3) Except as provided in subsection (4), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within 6 years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(4) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within 6 years after demand for payment is made to the acceptor or issuer, as the case may be.

(5) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within 6 years after demand for payment is made to the maker, but if the instrument states a maturity date and the maker is not required to pay before that date, the 6-year period begins when a demand for payment is in effect and the maturity date has passed.

(6) This subsection applies to an action to enforce the obligation of a party to pay an accepted draft, other than a certified check. If the obligation of the acceptor is payable at a definite time, the action must be commenced within 6 years after the payment date or dates stated in the draft or acceptance. If the obligation of the acceptor is payable on demand, the action must be commenced within 6 years after the date of the acceptance.

(7) Unless governed by other law regarding claims for indemnity or contribution, an action for conversion of an instrument, for money had and received, or for like action based on conversion; for breach of warranty; or to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within 3 years after the cause of action accrues.

History: En. Sec. 3-122, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-122; amd. Sec. 105, Ch. 410, L. 1991.

Cross-References

GENERAL

Contract of maker, drawer, and acceptor, 30-3-413.

Contract of endorser — order of liability, 30-3-414.

DEFINITIONAL

Action, 30-1-201.

Certificate of deposit, 30-3-102.

Draft, 30-3-104.

Instrument, 30-3-102.

Note, 30-3-104.

Notice of dishonor, 30-3-508.

On demand, 30-3-108.

30-3-123. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 593, C. Civ. Proc. 1895; re-en. Sec. 6500, Rev. C. 1907; re-en. Sec. 9092, R.C.M. 1921; re-en. Sec. 9092, R.C.M. 1935; amd. Sec. 18, Ch. 265, L. 1977; R.C.M. 1947, 93-2830.

30-3-124. Subject matter. (1) This chapter applies to negotiable instruments. It does not apply to money or to payment orders governed by chapter 4A. A negotiable instrument that is also a certificated security under 30-8-112(1)(d) is subject to chapter 8 and to this chapter.

(2) In the event of conflict between the provisions of this chapter and those of chapter 4, chapter 8, or chapter 9, the provisions of chapter 4, chapter 8, and chapter 9 prevail over those of this chapter.

(3) Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

History: En. Sec. 88, Ch. 410, L. 1991; amd. Sec. 4, Ch. 536, L. 1997.

30-3-125. Issue of instrument. (1) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(2) An unissued instrument or an unissued incomplete instrument (30-3-115) that is completed is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(3) "Issuer" applies to issued and unissued instruments and means any person that signs an instrument as maker or drawer.

History: En. Sec. 91, Ch. 410, L. 1991.

30-3-126. Identification of person to whom instrument is payable. (1) A person to whom an instrument is payable is determined by the intent of the person, whether or not authorized, signing as, in the name of, or on behalf of the maker or drawer. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or on behalf of the maker or drawer and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(2) If the signature of the maker or drawer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(3) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(a) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(b) If an instrument is payable to:

(i) a trust, estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar representative of a named or identified person, the instrument is payable either to the represented person, the representative, or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(4) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more

persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

History: En. Sec. 97, Ch. 410, L. 1991.

30-3-127. Place of payment. Except as otherwise provided for items in chapter 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

History: En. Sec. 98, Ch. 410, L. 1991.

30-3-128. Interest. (1) Unless otherwise provided in the instrument, an instrument is not payable with interest and interest on an interest-bearing instrument is payable from the date of the instrument.

(2) Interest may be stated in an instrument as a fixed or variable amount of money, or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

History: En. Sec. 99, Ch. 410, L. 1991.

30-3-129. Contradictory terms of instrument. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

History: En. Sec. 101, Ch. 410, L. 1991.

30-3-130. Joint and several liability — contribution. (1) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who are indorsing joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(2) Except as provided in 30-3-424(5) or by agreement of the affected parties, a party with joint and several liability that pays the instrument is entitled to receive from any party with the same joint and several liability contribution in accordance with applicable law.

(3) Discharge of one party with joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (2) of a party with the same joint and several liability to receive contribution from the party discharged.

History: En. Sec. 103, Ch. 410, L. 1991.

30-3-131. Notice of right to defend action. In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or chapter 4, the defendant may give the third person written notice of the litigation and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

History: En. Sec. 106, Ch. 410, L. 1991.

Part 2
Transfer and Negotiation

30-3-201. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-201.

30-3-202. Negotiation. (1) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument to a person who thereby becomes its holder if possession is obtained from a person other than the issuer of the instrument.

(2) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

History: En. Sec. 3-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-202; amd. Sec. 107, Ch. 410, L. 1991.

Cross-References

GENERAL

Endorsement — presumption as to time, 26-1-602.

Special endorsement — blank endorsement, 30-3-204.

Warranties on presentment and transfer, 30-3-417.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Written, 30-1-201.

30-3-203. Indorsement. (1) "Indorsement" means a signature, other than that of a maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument, restricting payment of the instrument, or incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, the terms of the instrument, the place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(2) "Indorser" means a person who makes an indorsement.

(3) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(4) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name, or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

History: En. Sec. 3-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-203; amd. Sec. 110, Ch. 410, L. 1991.

Cross-References

DEFINITIONAL

Instrument, 30-3-102.
Person, 30-1-201.
Signature, 30-3-401.

30-3-204. Special indorsement — blank indorsement — anomalous indorsement. (1) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement". When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in 30-3-126 apply to special indorsements.

(2) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement". When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(3) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(4) "Anomalous indorsement" means an indorsement made by a person that is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

History: **En. Sec. 3-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-204; amd. Sec. 111, Ch. 410, L. 1991.**

Cross-References

GENERAL

Negotiation, 30-3-202.

DEFINITIONAL

Bearer, 30-1-201.

Delivery, 30-1-201.

Instrument, 30-3-102.

Person, 30-1-201.

Signature, 30-3-401.

30-3-205. Restrictive indorsement. (1) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(2) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(3) The following rules apply to an instrument bearing an indorsement, described in 30-4-201(2), or in blank or to a particular bank using the words "for collection", "for deposit", or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account:

(a) A person, other than a bank, that purchases the instrument when so indorsed converts the instrument unless the proceeds of the instrument are received by the indorser or are applied consistently with the indorsement.

(b) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(c) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(d) Except as otherwise provided in subsection (3)(c), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(4) Except for an indorsement covered by subsection (3), the following rules apply to an instrument bearing an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person:

(a) Unless there is notice of breach of fiduciary duty as provided in 30-3-308, a person that purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(b) A later transferee of the instrument or person that pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(5) Purchase of an instrument bearing an indorsement to which this section applies does not prevent the purchaser from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (3).

(6) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

History: En. Sec. 3-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-205; amd. Sec. 112, Ch. 410, L. 1991.

Cross-References

GENERAL

Payment of taxes by negotiable instrument, 15-1-421.

Negotiation, 30-3-202.

Restrictive indorsements, 30-3-205.

Notice to purchaser, 30-3-304.

Conversion of instrument — innocent representative, 30-3-419.

Payment or satisfaction, 30-3-603.

Effect of instructions, 30-4-203.

Supplying missing endorsement — no notice from prior endorsement, 30-4-205.

DEFINITIONAL

Instrument, 30-3-102.

Person, 30-1-201.

30-3-206. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-206.

30-3-207. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-207.

30-3-208. Reacquisition. Reacquisition of an instrument occurs if it is transferred, by negotiation or otherwise, to a former holder. A former holder that reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any late holder.

History: En. Sec. 3-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-208; amd. Sec. 113, Ch. 410, L. 1991.

Cross-References

GENERAL

Payment or satisfaction, 30-3-603.

Cancellation and renunciation, 30-3-605.

DEFINITIONAL

Holder in due course, 30-3-302.

Instrument, 30-3-102.

Party, 30-1-201.

30-3-209. Negotiation subject to rescission. (1) Negotiation is effective even if obtained:

(a) from an infant, a corporation exceeding its powers, or a person without capacity; or

(b) by fraud, duress, or mistake or in breach of duty or as part of an illegal transaction.

(2) To the extent permitted by law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

History: En. Sec. 108, Ch. 410, L. 1991.

30-3-210. Rights acquired by transfer. (1) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(2) Transfer of an instrument, regardless of whether the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee may not acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the purchaser engaged in fraud or illegality affecting the instrument.

(3) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(4) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

History: En. Sec. 109, Ch. 410, L. 1991.

Part 3

Rights of a Holder

30-3-301. Person entitled to enforce instrument. "Person entitled to enforce" an instrument means the holder of an instrument, a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument pursuant to 30-3-309. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

History: En. Sec. 3-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-301; amd. Sec. 114, Ch. 410, L. 1991.

Cross-References

GENERAL

Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Rights, 30-1-201.

30-3-302. Holder in due course. (1) Subject to subsection (3) and 30-3-105(4), "holder in due course" means the holder of an instrument if:

(a) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) the holder took the instrument:

(i) for value;

(ii) in good faith;

(iii) without notice that it is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series;

(iv) without notice that the instrument contains an unauthorized signature or has been altered;

(v) without notice of any claim to the instrument stated in 30-3-306; and

(vi) without notice that any party to the instrument has any defense or claim in recoupment stated in 30-3-305(1).

(2) Notice of discharge of a party to the instrument, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (1), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(3) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken:

(a) by legal process or by purchase at at an execution, bankruptcy, or creditor's sale or similar proceeding;

(b) by purchase as part of a bulk transaction not in ordinary course of business of the transferor; or

(c) as the successor in interest to an estate or other organization.

(4) If, under 30-3-303(1)(a), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(5) If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument that, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(6) To be effective, notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

(7) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

History: En. Sec. 3-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-302; amd. Sec. 115, Ch. 410, L. 1991.

Cross-References

GENERAL

Taking for value, 30-3-303.
Notice to purchaser, 30-3-304.
Rights of holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.

DEFINITIONAL

Good faith, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice, 30-1-201.
Notice of dishonor, 30-3-508.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Value, 30-3-303.

30-3-303. Value and consideration. (1) An instrument is issued or transferred for value if:

(a) the instrument is issued or transferred for a promise of performance, to the extent that the promise has been performed;

(b) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceedings;

(c) the instrument is issued or transferred as payment of, or as security for, an an existing obligation of any person, whether or not the obligation is due;

(d) the instrument is issued or transferred in exchange for a negotiable instrument; or

(e) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(2) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the drawer or maker has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (1), the instrument is also issued for consideration.

History: En. Sec. 3-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-303; amd. Sec. 116, Ch. 410, L. 1991.

Cross-References

GENERAL

Holder in due course, 30-3-302.

Contract of accommodation party, 30-3-415.

Warranties on presentment and transfer, 30-3-417.

When bank gives value for purposes of holder in due course, 30-4-209.

DEFINITIONAL

Holder, 30-1-201.

Instrument, 30-3-102.

Person, 30-1-201.

Security interest, 30-1-201.

30-3-304. Overdue instrument. (1) An instrument payable on demand becomes overdue at the earliest of the following times:

(a) on the day after the day demand for payment is duly made;

(b) if the instrument is a check, 90 days after its date; or

(c) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date that is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and trade usage.

(2) With respect to an instrument payable at a definite time, the following rules apply:

(a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(3) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is a default in payment of interest but no default in payment of principal.

History: En. Sec. 3-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-304; amd. Sec. 117, Ch. 410, L. 1991.

Cross-References

GENERAL

When promise or order unconditional, 30-3-105.

Other writings affecting instrument, 30-3-119.

Holder in due course, 30-3-302.

Alteration, 30-3-407.

DEFINITIONAL

Accommodation party, 30-3-415.

Agreement, 30-1-201.

Alteration, 30-3-407.

Bank, 30-1-201.

Check, 30-3-104.

Holder in due course, 30-3-302.

Instrument, 30-3-102.

Issue, 30-3-102.

Negotiation, 30-3-202.

Notice, 30-1-201.

Party, 30-1-201.

Person, 30-1-201.

Presumed, 30-1-201.

Promise, 30-3-102.

Purchaser, 30-1-201.

Reasonable time, 30-1-204.

Signed, 30-1-201.

Term, 30-1-201.

30-3-305. Defenses and claims in recoupment. (1) Except as stated in subsection (2), the right to enforce the obligation of a party to pay the instrument is subject to the following:

(a) A defense of the obligor based on:

(i) infancy of the obligor to the extent that it is a defense to a simple contract;

(ii) duress, lack of legal capacity, or illegality of the transaction that nullifies the obligation of the obligor;

(iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or

(iv) discharge of the obligor in insolvency proceedings.

(b) A defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract.

(c) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument. The claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (1)(a) but is not subject to defenses of the obligor stated in subsection (1)(b) or claims in recoupment stated in subsection (1)(c) against a person other than the holder.

(3) Except as stated in subsection (4), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (30-3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, or lack of legal capacity.

History: En. Sec. 3-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-305; amd. Sec. 118, Ch. 410, L. 1991.

Cross-References

GENERAL

Incomplete instruments, 30-3-115.
Reacquisition, 30-3-208.
Notice to purchaser, 30-3-304.
Rights of one not holder in due course, 30-3-306.
Burden of establishing signatures, defenses, and due course, 30-3-307.
Alteration, 30-3-407.

DEFINITIONAL

Contract, 30-1-201.
Holder in due course, 30-3-302.
Insolvency proceedings, 30-1-201.
Instrument, 30-3-102.
Notice, 30-1-201.
Party, 30-1-201.
Person, 30-1-201.
Term, 30-1-201.

30-3-306. Claims to an instrument. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

History: En. Sec. 3-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-306; amd. Sec. 119, Ch. 410, L. 1991.

Cross-References

GENERAL

Holder in due course, 30-3-302.
Rights of holder in due course, 30-3-305.
Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Action, 30-1-201.
Contract, 30-1-201.
Delivery, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Rights, 30-1-201.

30-3-307. Proof of signatures and status as holder in due course. (1) In an action with respect to an instrument, the authenticity of and authority to make each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person pursuant to 30-3-403(1).

(2) If the validity of signatures is admitted or proved and there is compliance with subsection (1), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under 30-3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course that are not subject to the defense or claim.

History: En. Sec. 3-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-307; amd. Sec. 121, Ch. 410, L. 1991.

Cross-References

GENERAL

Holder in due course, 30-3-302.

Rights of holder in due course, 30-3-305.

Rights of one not holder in due course, 30-3-306.

Signature, 30-3-401.

Signature by authorized representative, 30-3-403.

Unauthorized signatures, 30-3-404.

DEFINITIONAL

Action, 30-1-201.

Burden of establishing, 30-1-201.

Defendant, 30-1-201.

Genuine, 30-1-201.

Holder, 30-1-201.

Holder in due course, 30-3-302.

Instrument, 30-3-102.

Party, 30-1-201.

Person, 30-1-201.

Presumed, 30-1-201.

Rights, 30-1-201.

Signature, 30-3-401.

30-3-308. Notice of breach of fiduciary duty. (1) This section applies if an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty. Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person. "Fiduciary" means an agent, trustee, partner, corporation officer or director, or other representative owing a fiduciary duty with respect to the instrument. "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty is owed.

(2) If the instrument is payable to the fiduciary, as such, or to the represented person, the taker has notice of the breach of fiduciary duty if the instrument is:

(a) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(b) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(c) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If the instrument is made or drawn by the fiduciary, as such, payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If the instrument is made or drawn by or on behalf of the represented person to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:

(a) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(b) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(c) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

History: **En. Sec. 120, Ch. 410, L. 1991.**

30-3-309. Enforcement of lost, destroyed, or stolen instrument. (1) A person not in possession of an instrument is entitled to enforce the instrument if:

(a) that person was in rightful possession of the instrument and entitled to enforce it when loss of possession occurred;

(b) the loss of possession was not the result of a voluntary transfer by that person or a lawful seizure; and

(c) that person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument pursuant to subsection (1) shall prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, 30-3-307 applies to the case as though the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

History: **En. Sec. 122, Ch. 410, L. 1991.**

30-3-310. Effect of instrument on obligation for which taken. (1) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(2) Unless otherwise agreed and except as provided in subsection (1), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken.

(3) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(4) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(5) If the check or note is dishonored and the obligee of the obligation for which the instrument was taken has possession of the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person that is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(6) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the

extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent, the obligee's rights against the obligor are limited to enforcement of the instrument.

(7) If an instrument other than one described in subsection (1) or (2) is taken for an obligation, the effect is:

(a) that stated in subsection (1) if the instrument is one on which a bank is liable as maker or acceptor; or

(b) that stated in subsection (2) in any other case.

History: En. Sec. 123, Ch. 410, L. 1991.

30-3-311. Accord and satisfaction by use of instrument. (1) This section applies if a person against whom a claim is asserted proves that:

(a) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim;

(b) the amount of the claim was unliquidated or subject to a bona fide dispute; and

(c) the claimant obtained payment of the instrument.

(2) Unless subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3) Subject to subsection (4), a claim is not discharged under subsection (2) if the claimant is an organization and proves that within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place and the instrument or accompanying communication was not received by that designated person, office, or place.

(4) Notwithstanding subsection (3), a claim is discharged under subsection (2) if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, an agent of the claimant having direct responsibility with respect to the disputed obligation knew that the instrument was tendered in full satisfaction of the claim or received the instrument and any accompanying written communication.

History: En. Sec. 124, Ch. 410, L. 1991.

Part 4

Liability of Parties

30-3-401. Signature. (1) A person is not liable on an instrument unless:

(a) the person signed the instrument; or

(b) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under 30-3-403.

(2) A signature is made:

(a) manually or by means of a device or machine; and

(b) by use of any name, including any trade or assumed name, or by any word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

History: En. Sec. 3-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-401; amd. Sec. 125, Ch. 410, L. 1991.

Cross-References

GENERAL

Negotiation, 30-3-202.

Wrong or misspelled name, 30-3-203.

Signature by authorized representative, 30-3-403.

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Definition and operation of acceptance, 30-3-410.

DEFINITIONAL

Instrument, 30-3-102.

Person, 30-1-201.

Signed, 30-1-201.

Written, 30-1-201.

30-3-402. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-402.

30-3-403. Signature by representative. (1) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(2) If a representative signs the name of the representative to an instrument and that signature is an authorized signature of the represented person, the following rules apply:

(a) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(b) Subject to subsection (3), if the form of the signature does not show unambiguously that the signature is made in a representative capacity, or the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties to the instrument did not intend the representative to be liable on the instrument.

(3) If a representative signs the name of the representative as drawer of a check without indication of the representative's status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

History: En. Sec. 3-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-403; amd. Sec. 126, Ch. 410, L. 1991.

Cross-References

GENERAL

Burden of establishing signatures, defenses, and due course, 30-3-307.

Signature, 30-3-401.

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

DEFINITIONAL

Instrument, 30-3-102.

Person, 30-1-201.

Representative, 30-1-201.

Signature, 30-3-401.

30-3-404. Unauthorized signatures. (1) Unless otherwise provided in this chapter, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this chapter.

(2) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is missing.

(3) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter that makes the unauthorized signature effective for the purposes of this chapter.

History: En. Sec. 3-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-404; amd. Sec. 127, Ch. 410, L. 1991.

Cross-References

GENERAL

Facsimile signatures or seals of public officers — misuse, 2-16-114.

Burden of establishing signatures, defenses, and due course, 30-3-307.

Signature, 30-3-401.

Signature by authorized representative, 30-3-403.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Issuing bad check, 45-6-316.

Forgery, 45-6-325.

DEFINITIONAL

Good faith, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Rights, 30-1-201.
Signature, 30-3-401.
Signed, 30-1-201.
Unauthorized signature, 30-1-201.
Value, 30-3-303.

30-3-405. Impostors — fictitious payees. (1) If an impostor by use of the mails or otherwise induces the maker or drawer of an instrument to issue the instrument to the impostor or to a person acting in concert with the impostor by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of any person who in good faith pays the instrument or takes it for value or for collection.

(2) If a person whose intent determines to whom an instrument is payable (30-3-126(1) or (2)) does not intend the person identified as payee to have any interest in the instrument or if the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(a) Any person in possession of the instrument is its holder.

(b) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of any person who in good faith pays the instrument or takes it for value or for collection.

(3) Under subsection (1) or (2), an indorsement is made in the name of a payee if:

(a) it is made in a name substantially similar to that of the payee; or

(b) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(4) With respect to an instrument to which subsection (1) or (2) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

History: En. Sec. 3-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-405; amd. Sec. 128, Ch. 410, L. 1991.

Cross-References

GENERAL

Signature, 30-3-401.

Signature by authorized representative, 30-3-403.

Unauthorized signatures, 30-3-404.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Forgery, 45-6-325.

DEFINITIONAL

Instrument, 30-3-102.
Issue, 30-3-102.
Person, 30-1-201.
Signature, 30-3-401.

30-3-406. Negligence contributing to forged signature or alteration of instrument. (1) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a a person who in good faith pays the instrument or takes it for value.

(2) If the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(3) Under subsection (1), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (2), the burden of proving failure to exercise ordinary care is on the person precluded.

History: En. Sec. 3-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-406; amd. Sec. 130, Ch. 410, L. 1991.

Cross-References

GENERAL

Signature, 30-3-401.
Unauthorized signatures, 30-3-404.
Alteration, 30-3-407.

DEFINITIONAL

Alteration, 30-3-407.
Good faith, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Unauthorized signature, 30-1-201.

30-3-407. Alteration. (1) "Alteration" means:

(a) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party to the instrument; or

(b) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of any party to the instrument.

(2) Except as provided in subsection (3), an alteration fraudulently made discharges any party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges any party, and the instrument may be enforced according to its original terms.

(3) A person paying a fraudulently altered instrument or taking it for value in good faith and without notice of the alteration may enforce rights with respect to the instrument:

(a) according to its original terms; or

(b) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

History: En. Sec. 3-407, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-407; amd. Sec. 131, Ch. 410, L. 1991.

Cross-References

GENERAL

Altered bill or note — limitation on action because of banks' payment, 27-2-213.
Incomplete instruments, 30-3-115.
Notice to purchaser, 30-3-304.
Rights of holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.
Burden of establishing signatures, defenses, and due course, 30-3-307.
When bank may charge customer's account, 30-4-401.

DEFINITIONAL

Contracts, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Signed, 30-1-201.
Writing, 30-1-201.

30-3-408. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-408, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-408.

30-3-409. Drawee not liable on unaccepted draft. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

History: En. Sec. 3-409, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-409; amd. Sec. 132, Ch. 410, L. 1991.

Cross-References

GENERAL

Definition and operation of acceptance, 30-3-410.

Acceptance varying draft, 30-3-412.

Contract of accommodation party, 30-3-415.

Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Acceptance, 30-3-410.
Check, 30-3-104.
Contract, 30-1-201.
Draft, 30-3-104.
Instrument, 30-3-102.

30-3-410. Acceptance of draft — certified check. (1) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(2) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(3) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(4) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (1) or by a writing on the check that indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

History: En. Sec. 3-410, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-410; amd. Sec. 133, Ch. 410, L. 1991.

Cross-References

GENERAL

What constitutes acceptance of goods, 30-2-606.

Signature, 30-3-401.

Draft not assignment, 30-3-409.

Acceptance varying draft, 30-3-412.

Warranties on presentment and transfer, 30-3-417.

Conversion of instrument — innocent representative, 30-3-419.

DEFINITIONAL

Delivery, 30-1-201.
Draft, 30-3-104.
Good faith, 30-1-201.
Holder, 30-1-201.
Honor, 30-1-201.
Notification, 30-1-201.

30-3-411. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-411, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-411.

30-3-412. Acceptance varying draft. (1) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(2) The terms of the draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(3) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

History: En. Sec. 3-412, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-412; amd. Sec. 134, Ch. 410, L. 1991.

Cross-References

GENERAL

Definition and operation of acceptance, 30-3-410.

Contract of maker, drawer, and acceptor, 30-3-413.

How presentment made, 30-3-504.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Draft, 30-3-104.
Holder, 30-1-201.
Term, 30-1-201.
Written, 30-1-201.

30-3-413. Obligation of maker. (1) A maker of a note is obliged to pay the note:

(a) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or

(b) if the maker signed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the note or to an indorser that paid the note pursuant to 30-3-414.

History: En. Sec. 3-413, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-413; amd. Sec. 136, Ch. 410, L. 1991.

Cross-References

GENERAL

Treble damages for issuing bad check, 27-1-717.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Alteration, 30-3-407.

Acceptance varying draft, 30-3-412.

Warranties on presentment and transfer, 30-3-417.

DEFINITIONAL

Contract, 30-1-201.
Draft, 30-3-104.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Party, 30-1-201.

30-3-414. Obligation of indorser. (1) Subject to subsections (2) through (4) and to 30-3-415(4), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was indorsed or if the indorser indorsed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser that paid the instrument pursuant to this section.

(2) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (1) to pay the instrument.

(3) If notice of dishonor of an instrument is required by 30-3-508 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (1) is discharged.

(4) If a draft is accepted by a bank after an indorsement is made and the acceptor dishonors the draft, the indorser is not liable under subsection (1) to pay the instrument.

(5) If an indorser of a check is liable under subsection (1) and the check is not presented for payment or given to a depositary bank for collection within 30 days after the day the indorsement was made, the liability of the indorser under subsection (1) is discharged.

History: En. Sec. 3-414, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-414; amd. Sec. 139, Ch. 410, L. 1991.

Cross-References

GENERAL

Contract of maker, drawer, and acceptor, 30-3-413.

Warranties on presentment and transfer, 30-3-417.

DEFINITIONAL

Contract, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Presumed, 30-1-201.
Signature, 30-3-401.

30-3-415. Instruments signed for accommodation. (1) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(2) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and regardless of whether the accommodation party receives consideration for the accommodation.

(3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in 30-3-607, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(4) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

(a) execution of judgment against the other party has been returned unsatisfied;

(b) the other party is insolvent or in an insolvency proceeding;

(c) the other party cannot be served with process; or

(d) it is otherwise apparent that payment cannot be obtained from the party whose obligation is guaranteed.

(5) An accommodation party that pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

History: En. Sec. 3-415, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-415; amd. Sec. 140, Ch. 410, L. 1991; amd. Sec. 53, Ch. 10, L. 1993.

Cross-References

GENERAL

Rights of holder in due course, 30-3-305.

Rights of one not holder in due course, 30-3-306.

Payment or satisfaction, 30-3-603.

Tender of payment, 30-3-604.

DEFINITIONAL

Holder in due course, 30-3-302.

Instrument, 30-3-102.

Notice, 30-1-201.

Party, 30-1-201.

Presentment, 30-3-504.

Signed, 30-1-201.

Writing, 30-1-201.

30-3-416. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-416, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-416.

30-3-417. Transfer warranties. (1) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(a) the warrantor is a person entitled to enforce the instrument;

(b) all signatures on the instrument are authentic and authorized;

(c) the instrument has not been altered;

(d) the instrument is not subject to a defense or claim in recoupment (30-3-305(1)) of any party that can be asserted against the warrantor; and

(e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) A person to whom the warranties under subsection (1) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(3) The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History: En. Sec. 3-417, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-417; amd. Sec. 141, Ch. 410, L. 1991.

Cross-References

GENERAL

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Contract of endorser — order of liability, 30-3-414.

Warranties of customer and collecting bank on transfer or presentment of items — time for claims, 30-4-207.

Warranty on sale of written instrument, 30-11-220.

DEFINITIONAL

Acceptance, 30-3-410.
Alteration, 30-3-407.
Bank, 30-1-201.
Draft, 30-3-104.
Genuine, 30-1-201.
Good faith, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Note, 30-3-104.
Party, 30-1-201.
Person, 30-1-201.
Signature, 30-3-401.
Term, 30-1-201.

30-3-418. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-418, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-418.

30-3-419. Conversion of instrument. (1) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if the instrument lacks an indorsement necessary for negotiation and it is purchased or taken for collection or the drawee takes the instrument and makes payment to a person not entitled to receive payment. An action for conversion of an instrument may not be brought by:

(a) the maker, drawer, or acceptor of an instrument; or

(b) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or copayee.

(2) In an action under subsection (1), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(3) A representative, other than a depositary bank, that has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

History: En. Sec. 3-419, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-419; amd. Sec. 144, Ch. 410, L. 1991.

Cross-References

GENERAL

Draft not assignment, 30-3-409.
Definition and operation of acceptance, 30-3-410.
Warranties on presentment and transfer, 30-3-417.
Payment or satisfaction, 30-3-603

DEFINITIONAL

Acceptance, 30-3-410.
Action, 30-1-201.
Bank, 30-1-201.
Collecting bank, 30-3-102, 30-4-105.
Depositary bank, 30-3-102, 30-4-105.
Good faith, 30-1-201.
Instrument, 30-3-102.
Intermediary bank, 30-3-102, 30-4-105.
On demand, 30-3-108.
Person, 30-1-201.
Presumed, 30-1-201.
Representative, 30-1-201.

30-3-420. Employer responsibility for fraudulent indorsement by employee. (1) This section applies to fraudulent indorsements of instruments with respect to which an employer has entrusted an employee with responsibility as part of the employee's duties. The following definitions apply to this section:

(a) "Employee" includes, in addition to an employee of an employer, an independent contractor and employee of an independent contractor retained by the employer.

(b) "Fraudulent indorsement" means:

(i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer; or

(ii) in the case of an instrument with respect to which the employer is drawer or maker, a forged indorsement purporting to be that of the person identified as payee.

(c) (i) "Responsibility" with respect to instruments means authority to:

(A) sign or indorse instruments on behalf of the employer;

(B) process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition;

(C) prepare or process instruments for issue in the name of the employer;

(D) supply information determining the names or addresses of payees of instruments to be issued in the name of the employer;

(E) control the disposition of instruments to be issued in the name of the employer; or

(F) otherwise act with respect to instruments in a responsible capacity.

(ii) The term does not include the assignment of duties that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(2) For purposes of determining the rights and liabilities of a person who in good faith pays an instrument or takes it for value or for collection, if an employee entrusted with responsibility with respect to the instrument or a person acting in concert with the employee makes a fraudulent indorsement to the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(3) Under subsection (2), an indorsement is made in the name of the person to whom an instrument is payable if:

(a) it is made in a name substantially similar to the name of that person; or

(b) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

History: En. Sec. 129, Ch. 410, L. 1991.

30-3-421. Refusal to pay cashier's checks, teller's checks, and certified checks. (1) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(2) If the obligated bank wrongfully refuses to pay a cashier's check or certified check, stops payment of a teller's check, or refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(3) Expenses or consequential damages under subsection (2) are not recoverable if the refusal of the obligated bank to pay occurs because:

(a) the bank suspends payments;

(b) the obligated bank is asserting a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument;

(c) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument; or

(d) payment is prohibited by law.

History: En. Sec. 135, Ch. 410, L. 1991.

30-3-422. Obligation of acceptor. (1) An acceptor of a draft is obliged to pay the draft:

(a) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms;

(b) if the acceptance varies the terms of the draft, according to the terms of the draft as varied; or

(c) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser that paid the draft pursuant to 30-3-423 or 30-3-414.

(3) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. The obligation of the acceptor is the amount of the instrument at the time it was negotiated to the holder in due course if:

(a) the certification or acceptance does not state an amount;

(b) the instrument is subsequently altered by raising its amount; and

(c) the instrument is then negotiated to a holder in due course.

History: En. Sec. 137, Ch. 410, L. 1991.

30-3-423. Obligation of drawer. (1) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft:

(a) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or

(b) if the drawer signed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the draft or to an indorser that paid the draft pursuant to 30-3-414.

(3) If a draft is accepted by a bank and the acceptor dishonors the draft, the drawer has no obligation to pay the draft because of the dishonor, regardless of when or by whom acceptance was obtained.

(4) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser stated in 30-3-414(1) and (3).

(5) Words in a draft indicating that the draft is drawn without recourse are effective to disclaim all liability of the drawer to pay the draft if the draft is not a check, but they are not effective to disclaim the obligation stated in subsection (1) if the draft is a check.

(6) The drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds if:

(a) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date;

(b) the drawee suspends payments after expiration of the 30-day period without paying the check; and

(c) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check.

History: En. Sec. 138, Ch. 410, L. 1991.

30-3-424. Presentment warranties. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making the payment or accepting the draft in good faith that:

(a) the warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor, and if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under 30-3-405 or 30-3-420 or the drawer is precluded under 30-3-406 or 30-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) This subsection applies if a dishonored draft is presented for payment to the drawer or an indorser or any other instrument is presented for payment to a party obliged to pay the instrument and payment is received. The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and

the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History: En. Sec. 142, Ch. 410, L. 1991.

30-3-425. Payment or acceptance by mistake. (1) Except as provided in subsection (3), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that payment of the draft had not been stopped under 30-4-403, the signature of the purported drawer of the draft was authorized, or the balance in the drawer's account with the drawee represented available funds, the drawee may recover the amount paid for the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(2) Except as provided in subsection (3), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (1), the person paying or accepting may recover the amount paid or revoke acceptance to the extent allowed by the law governing mistake and restitution.

(3) The remedies provided by subsection (1) or (2) may not be asserted against a person who took the instrument in good faith and for value. This subsection does not limit remedies provided by 30-3-424 for breach of warranty.

History: En. Sec. 143, Ch. 410, L. 1991.

Part 5

Presentment, Notice of Dishonor, and Protest

30-3-501. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-501.

30-3-502. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-502.

30-3-503. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-503.

30-3-504. Presentment. (1) "Presentment" means a demand:

(a) to pay an instrument made to the maker, drawee, or acceptor or, in the case of a note of accepted draft payable at a bank, to the bank; or

(b) to accept a draft made to the drawee by a person entitled to enforce the instrument.

(2) Subject to chapter 4, agreement of the parties, clearing house rules and the like:

(a) presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; is effective if made to any one of two or more makers, acceptors, drawees, or other payors; and

(b) without dishonoring the instrument, the party to whom presentment is made may:

(i) treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour;

(ii) require exhibition of the instrument;

(iii) require reasonable identification of the person making presentment and evidence of authority to make it if made on behalf of another person;

(iv) require a signed receipt on the instrument for any payment made or surrender of the instrument if full payment is made;

(v) return the instrument for lack of a necessary indorsement; or

(vi) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other law or applicable rule.

History: En. Sec. 3-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-504; amd. Sec. 145, Ch. 410, L. 1991.

Cross-References

GENERAL

Acceptance varying draft, 30-3-412.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Clearinghouse, 30-4-104.
Draft, 30-3-104.
Holder, 30-1-201.
Instrument, 30-3-102.
Note, 30-3-104.
Party, 30-1-201.
Person, 30-1-201.

30-3-505. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-505.

30-3-506. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-506.

30-3-507. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-507.

30-3-508. Notice of dishonor. (1) The obligation of an indorser stated in 30-3-414(1) and the obligation of a drawer stated in 30-3-423(3) may not be enforced unless:

(a) the indorser or drawer is given notice of dishonor of the instrument complying with this section; or

(b) notice of dishonor is excused under 30-3-513(3).

(2) Notice of dishonor may be given to any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is a sufficient notice of dishonor.

(3) Subject to 30-3-513(4), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given by a bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument and by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

History: En. Sec. 3-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-508; amd. Sec. 147, Ch. 410, L. 1991.

Cross-References

GENERAL

Right of charge-back or refund, 30-4-212.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Customer, 30-4-104.
Holder, 30-1-201.
Insolvency proceedings, 30-1-201.
Instrument, 30-3-102.
Issue, 30-3-102.
Midnight deadline, 30-4-104.
Notifies, 30-1-201.
Party, 30-1-201.
Person, 30-1-201.
Representative, 30-1-201.
Rights, 30-1-201.

Send, 30-1-201.
Written and writing, 30-1-201.

30-3-509. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-509.

30-3-510. Evidence of dishonor. (1) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(a) a document regular in form as provided in subsection (2) that purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(c) a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business that shows dishonor, even if there is no evidence of who made the entry.

(2) A protest is a certificate of dishonor made by a United States consul or vice consul or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

History: En. Sec. 3-510, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-510; amd. Sec. 149, Ch. 410, L. 1991.

Cross-References

GENERAL

Notice of dishonor, 30-3-508.

DEFINITIONAL

Acceptance, 30-3-410.
Collecting bank, 30-4-105.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Presumption, 30-1-201.
Writing, 30-1-201.

30-3-511. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-511, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-511.

30-3-512. Dishonor. (1) Dishonor of a note is governed by the following rules:

(a) If the note is payable on demand, the note is dishonored if presentment is duly made and the note is not paid on the day of presentment.

(b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(c) If the note is not payable on demand and subsection (1)(b) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(a) If a check is presented for payment otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under 30-4-301 or 30-4-302 or becomes accountable for the amount of the check under 30-4-302.

(b) If the draft is payable on demand and subsection (2)(a) does not apply, the draft is dishonored if presentment for payment is duly made and the draft is not paid on the day of presentment.

(c) If the draft is payable on a date stated in the draft, the draft is dishonored if:

(i) presentment for payment is duly made and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later; or

(ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(d) If the draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(3) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsections (2)(b) through (2)(d) except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those subsections.

(4) Dishonor of an accepted draft is governed by the following rules:

(a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made and the draft is not paid on the day of presentment.

(b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under 30-3-513, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

History: En. Sec. 146, Ch. 410, L. 1991.

30-3-513. Excused presentment and notice of dishonor. (1) Presentment for payment or acceptance of an instrument is excused if:

(a) the person entitled to present the instrument cannot with reasonable diligence make presentment;

(b) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings;

(c) by the terms of the instrument, presentment is not necessary to enforce the obligation of indorsers or the drawer; or

(d) the drawer or indorser whose obligation is being enforced waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted.

(2) Presentment for payment or acceptance of a draft is also excused if the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(3) Notice of dishonor is excused if by the terms of the instrument, notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument or the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(4) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

History: En. Sec. 148, Ch. 410, L. 1991.

Part 6

Discharge

30-3-601. Discharge and effect of discharge. (1) The obligation of a party to pay the instrument is discharged as stated in this chapter or by an act or agreement with the party that would discharge an obligation to pay money under a simple contract.

(2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

History: En. Sec. 3-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-601; amd. Sec. 150, Ch. 410, L. 1991.

Cross-References

GENERAL

Rights of holder in due course, 30-3-305.

Rights of one not holder in due course, 30-3-306.

Burden of establishing signatures, defenses, and due course, 30-3-307.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Contract of accommodation party, 30-3-415.

DEFINITIONAL

Action, 30-1-201.

Agreement, 30-1-201.

Alteration, 30-3-407.

Check, 30-3-104.

Contract, 30-1-201.

Draft, 30-3-104.

Instrument, 30-3-102.

Money, 30-1-201.

Notice of dishonor, 30-3-508.

Party, 30-1-201.

Presentment, 30-3-504.

Rights, 30-1-201.

30-3-602. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-602.

30-3-603. Payment. (1) Subject to subsection (2), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under 30-3-306 by another person.

(2) The obligation of a party to pay the instrument is not discharged under subsection (1) if:

(a) a claim to the instrument under 30-3-306 is enforceable against the party receiving payment and:

(i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or

(ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(b) the person making payment knows that the instrument is a stolen instrument and pays a person that it knows is in wrongful possession of the instrument.

History: En. Sec. 3-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-603; amd. Sec. 151, Ch. 410, L. 1991.

Cross-References

GENERAL

Restrictive indorsements, 30-3-205.

Reacquisition, 30-3-208.

Rights of holder, 30-3-301.

Rights of one not holder in due course, 30-3-306.

Contract of accommodation party, 30-3-415.

Discharge of parties, 30-3-601.

Tender of payment, 30-3-604.

DEFINITIONAL

Action, 30-1-201.

Holder, 30-1-201.

Instrument, 30-3-102.

Order, 30-3-102.

Party, 30-1-201.

Person, 30-1-201.

Rights, 30-1-201.

30-3-604. Tender of payment. (1) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(2) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(3) If tender of payment of an amount due on an instrument is made by or on behalf of the obligor to the person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is considered to have made tender of payment on the due date to the person entitled to enforce the instrument.

History: En. Sec. 3-604, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-604; amd. Sec. 152, Ch. 410, L. 1991.

Cross-References

GENERAL

How presentment made, 30-3-504.
Discharge of parties, 30-3-601.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
On demand, 30-3-108.
Party, 30-1-201.
Right, 30-1-201.

30-3-605. Discharge by cancellation or renunciation. (1) A person entitled to enforce an instrument may, with or without consideration, discharge the obligation of a party to pay the instrument:

(a) by an intentional voluntary act, such as surrender of the instrument to the party; destruction, mutilation, or cancellation of the instrument; cancellation or striking out of the party's signature; or the addition of words to the instrument indicating discharge; or

(b) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(2) Cancellation or striking out of an indorsement pursuant to subsection (1) does not affect the status and rights of a party derived from the indorsement.

History: En. Sec. 3-605, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-605; amd. Sec. 153, Ch. 410, L. 1991.

Cross-References

GENERAL

Discharge of parties, 30-3-601.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Party, 30-1-201.
Rights, 30-1-201.
Signature, 30-3-401.
Signed, 30-1-201.
Writing, 30-1-201.

30-3-606. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-606, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-606.

30-3-607. Discharge of indorsers and accommodation parties. (1) For the purposes of this section, the term "indorser" includes a drawer having the obligation stated in 30-3-423(3).

(2) Discharge of the obligation of a party to the instrument under 30-3-605 does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(3) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party to the instrument, including an extension of the due date, there is discharge of the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss

to the indorser or accommodation party with respect to the right of recourse. The indorser or accommodation party is considered to have suffered loss as a result of the modification equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was less than the amount of the right of recourse.

(4) If the obligation of a party to an instrument is secured by an interest in collateral and impairment of the value of the interest is caused by a person entitled to enforce the instrument, there is discharge of the obligation of an indorser or accommodation party having a right of recourse against the obligor to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge or the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(5) If the obligation of a party to an instrument is secured by an interest in collateral not provided by an accommodation party and the value of the interest is impaired by a person entitled to enforce the instrument, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (4), the party is considered to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(6) Under subsection (4) or (5), causation of impairment includes:

(a) failure to obtain or maintain perfection or recordation of the interest in collateral;

(b) release of collateral without substitution of collateral of equal value;

(c) failure to perform a duty to preserve the value of collateral owed, under chapter 9 or other law, to a debtor or surety or other person secondarily liable; or

(d) failure to comply with applicable law in disposing of collateral.

(7) An accommodation party is not discharged under subsection (3) or (4) unless the person agreeing to the modification or causing the impairment knows of the accommodation or has notice under 30-3-415(3) that the instrument was signed for accommodation. There is no discharge of any party under subsection (3), (4), or (5) if:

(a) the party asserting discharge consents to the event or conduct that is the basis of the discharge; or

(b) the instrument or a separate agreement of the party provides for waiver of discharge under this section, either specifically or by general language, indicating that parties to the instrument waive defenses based on suretyship or impairment of collateral.

History: **En. Sec. 154, Ch. 410, L. 1991.**

Part 7

Advice of International Sight Draft (Repealed. Sec. 230, Ch. 410, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

30-3-701. En. Sec. 3-701, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-701.

Part 8

Miscellaneous
(Repealed. Sec. 230, Ch. 410, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

30-3-801. En. Sec. 3-801, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-801.

30-3-802. En. Sec. 3-802, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-802.

30-3-803. En. Sec. 3-803, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-803.

30-3-804. En. Sec. 3-804, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-804.

30-3-805. En. Sec. 3-805, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-805.

CHAPTER 4

UNIFORM COMMERCIAL CODE BANK DEPOSITS AND COLLECTIONS

Part 1 — General Provisions and Definitions

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30-4-210. Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties.
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30-4-214. Insolvency and preference.
30-4-215. Presentment warranties.
30-4-216. Encoding and retention warranties.

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30-4-301. Deferred posting — recovery of payment by return of items — time of dishonor — return of items by payor bank.
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30-4-303. When items subject to notice, stop order, legal process or setoff — order in which items may be charged or certified.

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30-4-401. When bank may charge customer's account.
30-4-402. Bank's liability to customer for wrongful dishonor — time of determining insufficiency of account.
30-4-403. Customer's right to stop payment — burden of proof of loss.
30-4-404. Bank not obligated to pay check more than six months old.
30-4-405. Death or incompetence of customer.
30-4-406. Customer's duty to discover and report unauthorized signature or alteration.
30-4-407. Payor bank's right to subrogation on improper payment.

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30-4-501. Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor.
30-4-502. Presentment of "on arrival" drafts.
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30-4-504. Privilege of presenting bank to deal with goods — security interest for expenses.

Chapter Cross-References

Laws not repealed — branch banking, 30-1-111.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

Part 1

General Provisions and Definitions

Part Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

30-4-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections.

History: En. Sec. 4-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-101.

30-4-102. Applicability. (1) To the extent that items within this chapter are also within the scope of chapters 3, 5, and 8, they are subject to the provisions of those chapters. In the event of conflict the provisions of this chapter govern those of chapter 3 but the provisions of chapters 5 and 8 govern those of this chapter.

(2) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

History: En. Sec. 4-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-102; amd. Sec. 155, Ch. 410, L. 1991.

Cross-References

GENERAL

Territorial application of Code — parties' power to choose applicable law, 30-1-105.

Bank deposits and collections, Title 30, ch. 4.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Secured transactions — sales of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Bank, 30-1-201.
Branch, 30-1-201.
Item, 30-4-104.

30-4-103. Variation by agreement — measure of damages — action constituting ordinary care. (1) The effect of the provisions of this chapter may be varied by agreement, but the parties to the agreement may not disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(2) Federal reserve regulations and operating circulars, clearinghouse rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this chapter or pursuant to federal reserve regulations or operating circulars constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse and similar rules or with a general banking usage not disapproved by this chapter, constitutes prima facie the exercise of ordinary care.

(4) The specification or approval of certain procedures by this chapter does not constitute disapproval of other procedures that may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

History: En. Sec. 4-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-103; amd. Sec. 156, Ch. 410, L. 1991.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Responsibility for collection — when action seasonable, 30-4-202.

DEFINITIONAL

Bank, 30-1-201.

Good faith, 30-1-201.

Item, 30-4-104.

Usage, 30-1-205.

30-4-104. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) "account" means any deposit or credit account with a bank and includes a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(b) "afternoon" means the period of a day between noon and midnight;

(c) "banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "clearinghouse" means an association of banks or other payors regularly clearing items;

(e) "customer" means a person having an account with a bank or for whom a bank has agreed to collect items and includes a bank maintaining an account at another bank;

(f) "documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (30-8-112) or instructions for uncertificated securities (30-8-112), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(g) "draft" means a draft as defined in 30-3-104 or an item, other than an instrument, that is an order;

(h) "item" means an instrument or a promise or an order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by chapter 4A or a credit or debit card slip.

(i) "midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(j) "settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(k) "suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Bank". 30-4-105.
"Collecting bank". 30-4-105.
"Depositary bank". 30-4-105.
"Intermediary bank". 30-4-105.
"Payor bank". 30-4-105.
"Presenting bank". 30-4-105.
"Presentment notice". 30-4-111.

(3) The following definitions in other chapters apply to this chapter:

"Acceptance". 30-3-410.
"Alteration". 30-3-407.
"Cashier's check". 30-3-104.
"Certificate of deposit". 30-3-104.
"Certified check". 30-3-410.
"Check". 30-3-104.
"Drawee". 30-3-102.
"Good faith". 30-3-102.
"Holder in due course". 30-3-302.
"Instrument". 30-3-104.
"Notice of dishonor". 30-3-508.
"Order". 30-3-102.
"Ordinary care". 30-3-102.
"Person entitled to enforce". 30-3-301.
"Presentment". 30-3-504.
"Promise". 30-3-102.
"Prove". 30-3-102.
"Teller's check". 30-3-104.
"Unauthorized signature". 30-3-404.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 4-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-104; amd. Sec. 157, Ch. 410, L. 1991; amd. Sec. 5, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Bank, 30-1-201.
Documents, 30-1-201.
Money, 30-1-201.
Negotiable, 30-3-104.
Notice, 30-1-201.
Person, 30-1-201.

30-4-105. "Bank" — "depositary bank" — "intermediary bank" — "collecting bank" — "payor bank" — "presenting bank". In this chapter, unless the context otherwise requires:

(1) "bank" means any person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) "depositary bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "payor bank" means a bank that is the drawee of a draft;

(4) "intermediary bank" means a bank to which an item is transferred in course of collection except the depositary or payor bank;

(5) "collecting bank" means a bank handling an item for collection except the payor bank;

(6) "presenting bank" means a bank presenting an item except a payor bank.

History: En. Sec. 4-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-105; amd. Sec. 158, Ch. 410, L. 1991.

Cross-References

GENERAL

Negotiable instruments, Title 30, ch. 3.

DEFINITIONAL

Bank, 30-1-201

Customer, 30-4-104.

Item, 30-4-104.

30-4-106. Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this chapter and under chapter 3.

History: En. Sec. 4-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-106; amd. Sec. 160, Ch. 410, L. 1991.

Cross-References

GENERAL

Laws not repealed, 30-1-111.

How presentment made, 30-3-504.

Applicability (bank deposits and collections), 30-4-102.

DEFINITIONAL

Bank, 30-1-201

Branch, 30-1-201.

30-4-107. Time of receipt of items. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

History: En. Sec. 4-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-107.

Cross-References

DEFINITIONAL

Afternoon, 30-4-104.

Bank, 30-1-201.

Banking day, 30-4-104.

Item, 30-4-104.

Money, 30-1-201.

30-4-108. Delays. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank and with or without the approval of any person involved may waive, modify, or extend time limits imposed or permitted by this code for a period not exceeding 2 additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this code or by instructions is excused if:

(a) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank; and

(b) the bank exercises such diligence as the circumstances require.

History: En. Sec. 4-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-108; amd. Sec. 161, Ch. 410, L. 1991.

Cross-References

GENERAL

Applicability (bank deposits and collections), 30-4-102.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Responsibility for collection — when action seasonable, 30-4-202.

Right of charge-back or refund, 30-4-212.

Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal, 30-4-213.

Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.

Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Bank, 30-1-201.
Banking day, 30-4-104.
Collecting bank, 30-4-105.
Good faith, 30-1-201.
Item, 30-4-104.
Party, 30-1-201.

30-4-109. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 4-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-109.

30-4-110. Payable through or payable at bank — collecting bank. (1) If an item states that it is "payable through" a bank identified in the item:

(a) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item; and

(b) the item may be presented for payment only by or through the bank.

(2) If an item states that it is "payable at" a bank identified in the item, the item is drawn on the bank.

History: En. Sec. 159, Ch. 410, L. 1991.

30-4-111. Truncation. (1) "Truncation agreement" means an agreement, clearinghouse rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the truncation agreement.

(2) If presentment is made pursuant to a truncation agreement, a reference to "item" or "check" in this chapter means the presentment notice unless the context otherwise indicates.

(3) An intermediary bank handling a presentment notice pursuant to a truncation agreement has the rights of a holder of the item to the same extent it would have had rights in the item if the item had been physically transferred to it in the course of collection.

History: En. Sec. 162, Ch. 410, L. 1991.

30-4-112. Statute of limitations. An action to enforce an obligation, duty, or right arising under this chapter must be commenced within 3 years after the cause of action accrues.

History: En. Sec. 163, Ch. 410, L. 1991.

Part 2

Collection of Items
Depositary and Collecting Banks

30-4-201. Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank". (1) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final (subsections (3) and (4) of 30-4-211 and subsections (2) and (3) of 30-4-213), the bank with respect to the item is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and valid rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this chapter apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder:

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially endorsed by a bank to a person who is not a bank.

History: En. Sec. 4-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-201; amd. Sec. 164, Ch. 410, L. 1991.

Cross-References

GENERAL

Reacquisition, 30-3-208.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Transfer of items between banks, 30-4-206.

Insolvency and preference, 30-4-214.

Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Bank, 30-1-201.

Collecting bank, 30-4-105.

Customer, 30-4-104.

Depositary bank, 30-4-105.

Holder, 30-1-201.

Indorsements, 30-3-202, 30-3-204, 30-3-205.

Item, 30-4-104.

Person, 30-1-201.

Settle, 30-4-104.

30-4-202. Responsibility for collection or return — when action timely. (1) A collecting bank must exercise ordinary care in:

(a) presenting an item or sending it for presentment;

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

(c) settling for an item when the bank receives final settlement; and

(d) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank exercises ordinary care under subsection (1) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

History: En. Sec. 4-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-202; amd. Sec. 165, Ch. 410, L. 1991.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Time of receipt of items, 30-4-107.

Delays, 30-4-108.

Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.

Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Collecting bank, 30-4-105.

Depositary bank, 30-4-105.

Documentary draft, 30-4-104.

Item, 30-4-104.

Midnight deadline, 30-4-104.

Presentment, Title 30, ch. 3, part 5.

30-4-203. Effect of instructions. Subject to the provisions of chapter 3 concerning conversion of instruments (30-3-419) and restrictive endorsements (30-3-205), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

History: **En. Sec. 4-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-203; amd. Sec. 166, Ch. 410, L. 1991.**

Cross-References

GENERAL

Restrictive indorsements, 30-3-205.

Payment or satisfaction, 30-3-603.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Supplying missing endorsement — no notice from prior endorsement, 30-4-205.

DEFINITIONAL

Collecting bank, 30-4-105.

Restrictive indorsements, 30-3-205.

30-4-204. Methods of sending and presenting — sending directly to payor bank. (1) A collecting bank shall send items by a reasonably prompt method, taking into consideration any relevant instructions, the nature of the item, the number of those items on hand, and the cost of collection involved and the method generally used by it or others to present those items.

(2) A collecting bank may send:

(a) an item directly to the payor bank;

(b) an item to any nonbank payor if authorized by its transferor; and

(c) an item other than documentary drafts to a nonbank payor, if authorized by federal reserve regulation or operating circular, clearinghouse rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

History: **En. Sec. 4-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-204; amd. Sec. 167, Ch. 410, L. 1991.**

Cross-References

GENERAL

How presentment made, 30-3-504.

Presentment by notice of item not payable by, through, or at bank — liability of secondary parties, 30-4-210.

Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.

Presentment of "on arrival" drafts, 30-4-502.

DEFINITIONAL

Collecting bank, 30-4-105.

Documentary draft, 30-4-104.

Item, 30-4-104.

Payor bank, 30-4-105.

Presenting bank, 30-4-105.

30-4-205. Depositary bank holder of unindorsed item. If a customer is a holder of an item that is delivered to a depositary bank for collection:

(1) the depositary bank becomes a holder of the item at the time it receives the item for collection, whether or not the customer indorses, and if it satisfies the other requirements of 30-3-302, it may be a holder in due course; and

(2) the depositary bank warrants to subsequent collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

History: **En. Sec. 4-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-205; amd. Sec. 168, Ch. 410, L. 1991.**

Cross-References

GENERAL

Restrictive indorsements, 30-3-205.

Conversion of instrument — innocent representative, 30-3-419.

Payment or satisfaction, 30-3-603.

Effect of instructions, 30-4-203.

DEFINITIONAL

Collecting bank, 30-4-105.

Customer, 30-4-104.

Depositary bank, 30-4-105.

Intermediary bank, 30-4-105.

Item, 30-4-104.

Payor bank, 30-4-105.

Restrictive indorsements, 30-3-205.

30-4-206. Transfer between banks. Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

History: **En. Sec. 4-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-206; amd. Sec. 169, Ch. 410, L. 1991.**

Cross-References

GENERAL

Negotiation, 30-3-202.

DEFINITIONAL

Bank, 30-1-201.
Item, 30-4-104.

30-4-207. Transfer warranties. (1) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(a) the warrantor is a person entitled to enforce the item;

(b) all signatures on the item are authentic and authorized;

(c) the item has not been altered;

(d) the item is not subject to a defense or claim in recoupment stated in 30-3-305(1) of any party to the item that can be asserted against the warrantor; and

(e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) If an item is dishonored, a customer and collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred or, if the transfer was of an incomplete item, according to its terms when completed as stated in 30-3-115 and 30-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor may not disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(3) A person to whom the warranties under subsection (1) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(4) The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(5) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History: En. Sec. 4-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-207; amd. Sec. 170, Ch. 410, L. 1991.

Cross-References

GENERAL

Contract of endorser — order of liability, 30-3-414.

Warranties on presentment and transfer, 30-3-417.

Transfer between banks, 30-4-206.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

When bank gives value for purposes of holder in due course, 30-4-209.

Payor bank's responsibility for late return of item, 30-4-302.

Customer's duty to discover and report unauthorized signature or alteration, 30-4-406.

DEFINITIONAL

Collecting bank, 30-4-105.
Customer, 30-4-104.
Draft, 30-3-104.
Genuine, 30-1-201.
Good faith, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Insolvency proceedings, 30-1-201.
Item, 30-4-104.
Party, 30-1-201.
Payor bank, 30-4-105.
Person, 30-1-201.
Presentment, 30-3-504.
Unauthorized signature, 30-1-201.

30-4-208. Security interest of collecting bank in items, accompanying documents, and proceeds. (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of chapter 9 except that:

(a) no security agreement is necessary to make the security interest enforceable [(30-9-203)] (30-9-213(2)(c)(i)); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds. *(Bracketed reference deleted July 1, 2001.)*

History: En. Sec. 4-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-208; amd. Sec. 7, Ch. 402, L. 1983; amd. Sec. 173, Ch. 410, L. 1991; amd. Sec. 141, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 at end of (3)(a) substituted "30-9-213(2)(c)(i)" for "30-9-203". Amendment effective July 1, 2001.

Cross-References

GENERAL

Holder in due course, 30-3-302.

Taking for value, 30-3-303.

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.

When bank gives value for purposes of holder in due course, 30-4-209.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Bank, 30-1-201.
Item, 30-4-104.
Security interest, 30-1-201.
Settlement, 30-4-104.

30-4-209. When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, provided the bank otherwise complies with the requirements of 30-3-302 on what constitutes a holder in due course.

History: En. Sec. 4-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-209; amd. Sec. 174, Ch. 410, L. 1991.

Cross-References

GENERAL

Taking for value, 30-3-303.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

DEFINITIONAL

Bank, 30-1-201.
Holder in due course, 30-3-302.
Item, 30-4-104.
Security interest, 30-1-201.

30-4-210. Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under 30-3-504 by the close of the bank's next banking day after it knows of the requirement.

(2) If presentment is made by notice and neither payment, acceptance, nor request for compliance with a requirement under 30-3-504 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending it notice of the facts.

History: En. Sec. 4-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-210; amd. Sec. 175, Ch. 410, L. 1991.

Cross-References

GENERAL

How presentment made, 30-3-504.

Notice of dishonor, 30-3-508.

Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.

Presentment of "on arrival" drafts, 30-4-502.

DEFINITIONAL

Acceptance, 30-3-410.
Banking day, 30-4-104.
Collecting bank, 30-4-105.
Item, 30-4-104.
Party, 30-1-201.
Presentment, 30-3-504.
Secondary party, 30-3-102.
Send, 30-1-201.

30-4-211. Medium and time of settlement by bank. (1) With respect to settlement by a bank, the medium and time of settlement may be prescribed by federal reserve regulations or circulars, clearinghouse rules, and the like or by agreement. In the absence of such prescription:

(a) the medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement; and

(b) the time of settlement is:

(i) with respect to tender of settlement by cash, a cashier's check, or a teller's check, when the cash or check is sent or delivered;

(ii) with respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;

(iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to 30-4A-406(1) to the person receiving settlement.

(2) If the tender of settlement is not by a medium authorized by subsection (1) or the time of settlement is not fixed by subsection (1), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(3) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(a) presents or forwards the check for collection, settlement is final when the check is finally paid; or

(b) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(4) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

History: En. Sec. 4-211, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-211; amd. Sec. 176, Ch. 410, L. 1991.

Cross-References

GENERAL

Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal, 30-4-213.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Money, 30-1-201.
Payor bank, 30-4-105.
Person, 30-1-201.
Remitting bank, 30-4-105.
Settle, 30-4-104.

30-4-212. Right of charge-back or refund — liability of collecting bank — return of item. (1) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer, whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer but is liable for any loss resulting from the delay. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsections (3) and (4) of 30-4-211 and subsections (2) and (3) of 30-4-213).

(2) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(3) A depositary bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (30-4-301).

(4) The right to charge back is not affected by:

(a) previous use of a credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

History: En. Sec. 4-212, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-212; amd. Sec. 177, Ch. 410, L. 1991.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Money, 30-3-107.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Bank's liability to customer for wrongful dishonor, 30-4-402.

DEFINITIONAL

Account, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Intermediary bank, 30-4-105.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Payor bank, 30-4-105.
Send, 30-1-201.
Settlement, 30-4-104.
Suspension of payment, 30-4-104.

30-4-213. Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal. (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement; or

(c) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule, or agreement.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsections (3) and (4) of 30-4-211 and subsection (2) of this section) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to applicable law stating a time for availability of funds and any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(a) if the bank has received a provisional settlement for the item, when such settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(b) if the bank is both the depositary bank and the payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(5) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

History: En. Sec. 4-213, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-213; amd. Sec. 178, Ch. 410, L. 1991; amd. Sec. 134, Ch. 42, L. 1997.

Cross-References

GENERAL

Time of receipt of items, 30-4-107.

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.

Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.

Payor bank's responsibility for late return of item, 30-4-302.

When items subject to notice, stop order, legal process, or setoff — order in which items may be charged or certified, 30-4-303.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Banking day, 30-4-104.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Item, 30-4-104.
Money, 30-1-201.
Notice, 30-1-201.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.
Settlement, 30-4-104.

30-4-214. Insolvency and preference. (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsections (3) and (4) of 30-4-211 and subsections (1)(c), (2), and (3) of 30-4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer that is or becomes final, the owner of the item has a preferred claim against the collecting bank.

History: En. Sec. 4-214, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-214; amd. Sec. 179, Ch. 410, L. 1991.

Cross-References

Severability, 30-1-108.

Deposits in insolvent banks, 32-1-504.

Order of payment when bank liquidated, 32-1-534.

30-4-215. Presentment warranties. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(a) the warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft:

(a) breach of warranty is a defense to the obligation of the acceptor; and

(b) the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection (2) if the acceptor makes payment with respect to the draft.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under 30-3-405 or 30-3-420 or the drawer is precluded under 30-3-406 or 30-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) This subsection applies if a dishonored draft is presented for payment to the drawer or an indorser or any other item is presented for payment to a party obliged to pay the item and the item is paid. The person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a

person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History: En. Sec. 171, Ch. 410, L. 1991.

30-4-216. Encoding and retention warranties. (1) A person that encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(2) A person that undertakes to retain an item pursuant to a truncation agreement warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the truncation agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(3) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach plus expenses and loss of interest incurred as a result of the breach.

History: En. Sec. 172, Ch. 410, L. 1991.

Part 3

Collection of Items — Payor Banks

30-4-301. Deferred posting — recovery of payment by return of items — time of dishonor — return of items by payor bank. (1) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover any settlement if before it has paid the item in cash (subsection (1)(a) of 30-4-213) and before its midnight deadline it:

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item presented through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with clearinghouse rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

History: **En. Sec. 4-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-301; amd. Sec. 180, Ch. 410, L. 1991.**

Cross-References

GENERAL

Notice of dishonor, 30-3-508.

DEFINITIONAL

Banking day, 30-4-104.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Documentary draft, 30-4-104.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.
Send, 30-1-201.
Settlement, 30-4-104.

30-4-302. Payor bank's responsibility for late return of item. (1) If an item is presented to and received by a payor bank the bank is accountable for the amount of:

(a) a demand item, other than a documentary draft, whether properly payable or not if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not settle for or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

(2) The liability of a payor bank to pay an item pursuant to subsection (1) is subject to defenses based on breach of a presentment warranty (30-4-215) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

History: **En. Sec. 4-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-302; amd. Sec. 75, Ch. 370, L. 1987; amd. Sec. 181, Ch. 410, L. 1991.**

Cross-References

DEFINITIONAL

Acceptance, 30-3-410.
Banking day, 30-4-104.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Documentary draft, 30-4-104.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Properly payable, 30-4-104.
Settle, 30-4-104.

30-4-303. When items subject to notice, stop order, legal process or setoff — order in which items may be charged or certified. (1) Any knowledge, notice, or stop order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend, or modify such right or duty if the knowledge, notice, stop order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(a) the bank accepts or certifies the item;

(b) the bank pays the item in cash;

(c) the bank settles for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement;

(d) the bank becomes accountable for the amount of the item under 30-4-302 dealing with the payor bank's responsibility for late return of items; or

(e) with respect to checks, a cutoff hour no earlier than 1 hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

History: En. Sec. 4-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-303; amd. Sec. 182, Ch. 410, L. 1991.

Cross-References

GENERAL

Definition and operation of acceptance, 30-3-410.

Customer's right to stop payment — burden of proof of loss, 30-4-403.

Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Acceptance, 30-3-410.

Account, 30-4-104.

Agreement, 30-1-201.

Clearinghouse, 30-4-104.

Customer, 30-4-104.

Item, 30-4-104.

Notice, 30-1-201.

Payor bank, 30-4-105.

Settle, 30-4-104.

Part 4

Relationship Between Payor Bank and Its Customer

Part Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

30-4-401. When bank may charge customer's account. (1) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and the bank.

(2) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(3) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice will be effective for the period stated in 30-4-403(2) for stop orders and must be received at a time and in a manner as to afford the bank a reasonable opportunity to act on it before any action by the bank with respect to the check described in 30-4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items pursuant to 30-4-402.

(4) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(a) the original terms of the altered item; or

(b) the terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

History: En. Sec. 4-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-401; amd. Sec. 183, Ch. 410, L. 1991.

Cross-References

GENERAL

Incomplete instruments, 30-3-115.

Alteration, 30-3-407.

Customer's duty to discover and report unauthorized signature or alteration, 30-4-406.

Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Account, 30-4-104.

Bank, 30-1-201.

Customer, 30-4-104.

Good faith, 30-1-201.

Holder, 30-1-201.

Item, 30-4-104.

Properly payable, 30-4-104.

30-4-402. Bank's liability to customer for wrongful dishonor — time of determining insufficiency of account. (1) Except as otherwise provided in this chapter, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(2) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(3) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one such determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

History: En. Sec. 4-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-402; amd. Sec. 184, Ch. 410, L. 1991.

Cross-References

GENERAL

Breach of obligation to pay money, 27-1-312.

Liability for negligence as well as willful acts, 27-1-701.

Mistakes of fact or law, 28-2-408 through 28-2-410.

DEFINITIONAL

Bank, 30-1-201.

Customer, 30-4-104.

Item, 30-4-104.

30-4-403. Customer's right to stop payment — burden of proof of loss. (1) Subject to 27-1-717, a customer or any person authorized to draw on the account if there is more than one may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty and received by the bank at a time and in a manner as to afford the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in 30-4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(2) A stop order is effective for 6 months after the time it is received, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop order may be renewed for additional 6-month periods by a writing given to the bank within a period during which the stop order is effective.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order or order to close an account is on the customer. The loss from payment of an item contrary to a binding stop payment order may include damages for dishonor of subsequent items pursuant to 30-4-402.

History: En. Sec. 4-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-403; amd. Sec. 2, Ch. 557, L. 1985; amd. Sec. 185, Ch. 410, L. 1991.

Cross-References

GENERAL

Rights of holder in due course, 30-3-305.

Contract of maker, drawer, and acceptor, 30-3-413.

Payment or satisfaction, 30-3-603.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Death or incompetence of customer, 30-4-405.

Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL
Account, 30-4-104.
Bank, 30-1-201.
Burden of establishing, 30-1-201.
Customer, 30-4-104.
Item, 30-4-104.
Send, 30-1-201.

30-4-404. Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

History: En. Sec. 4-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-404.

Cross-References

GENERAL

Contract of maker, drawer, and acceptor, 30-3-413.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

DEFINITIONAL
Account, 30-4-104.
Bank, 30-1-201.
Check, 30-3-104.
Customer, 30-4-104.
Good faith, 30-1-201.
Presentment, 30-3-504.

30-4-405. Death or incompetence of customer. (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

History: En. Sec. 4-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-405.

Cross-References

DEFINITIONAL
Acceptance, 30-3-410.
Bank, 30-1-201.
Check, 30-3-104.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Item, 30-4-104.
Payor bank, 30-4-105.

30-4-406. Customer's duty to discover and report unauthorized signature or alteration. (1) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return to the customer the items paid or provide information in the statement of account sufficient to allow the customer to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(2) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of 7 years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(3) If a bank sends or makes available a statement of account or items pursuant to subsection (1), the customer shall exercise reasonable promptness in examining the statement or the item to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided,

the customer should reasonably have discovered the unauthorized payment, the customer has a duty to give prompt notification to the bank of the relevant facts.

(4) If the bank proves that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (3) the customer is precluded from asserting against the bank:

(a) the customer's unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notification from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time in which to examine the item or statement of account and notify the bank. "Reasonable period of time" is presumed to be 14 calendar days after the item or statement pursuant to subsection (1) was received by or made available to the customer.

(5) If subsection (4) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (4) does not apply.

(6) Without regard to care or lack of care of either the customer or the bank a customer who does not within 1 year from the time the statement or items are made available to the customer (subsection (1)) discover and report the customer's unauthorized signature or any alteration is precluded from asserting against the bank such unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under 30-4-215 with respect to the unauthorized signature or alteration to which the preclusion applies.

History: **En. Sec. 4-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-406; amd. Sec. 186, Ch. 410, L. 1991.**

Cross-References

GENERAL

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Alteration, 30-3-407.

Warranties on presentment and transfer, 30-3-417.

Warranties of customer and collecting bank on transfer or presentment of items — time for claims, 30-4-207.

DEFINITIONAL

Alteration, 30-3-407.
Bank, 30-1-201.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Endorsement, 30-3-204.
Good faith, 30-1-201.
Item, 30-4-104.
Payor bank, 30-4-105.
Send, 30-1-201.
Unauthorized signature, 30-1-201.

30-4-407. Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker, after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

(1) of any holder in due course on the item against the drawer or maker; and

(2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

History: **En. Sec. 4-407, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-407; amd. Sec. 187, Ch. 410, L. 1991.**

Cross-References

GENERAL

Customer's right to stop payment — burden of proof of loss, 30-4-403.

DEFINITIONAL

Holder, 30-1-201.
Holder in due course, 30-3-302.
Item, 30-4-104.
Payor bank, 30-4-105.

Part 5

Collection of Documentary Drafts

30-4-501. Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

History: **En. Sec. 4-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-501.**

Cross-References

GENERAL

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.

Responsibility for collection — when action seasonable, 30-4-202.

Effect of instructions, 30-4-203.

Methods of sending and presenting — sending direct to payor bank, 30-4-204.

Presentment by notice of item not payable by, through, or at bank — liability of secondary parties, 30-4-210.

30-4-502. Presentment of "on arrival" drafts. When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

History: **En. Sec. 4-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-502.**

Cross-References

GENERAL

Responsibility for collection — when action seasonable, 30-4-202.

Effect of instructions, 30-4-203.

DEFINITIONAL

Collecting bank, 30-4-105.

30-4-503. Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need. (1) Unless otherwise instructed and except as provided in chapter 5, a bank presenting a documentary draft:

(a) shall deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize the referee's services, it shall use diligence and good faith to ascertain the reason for dishonor, shall notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and shall request instructions.

(2) The presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

History: En. Sec. 4-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-503; amd. Sec. 188, Ch. 410, L. 1991.

Cross-References

GENERAL

When documents deliverable on acceptance — when on payment, 30-2-514.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

DEFINITIONAL

Documentary draft, 30-4-104.

Presenting bank, 30-4-105.

30-4-504. Privilege of presenting bank to deal with goods — security interest for expenses. (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

History: En. Sec. 4-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-504.

Cross-References

GENERAL

Seller's resale including contract for resale, 30-2-706.

Attachment and enforceability of security interest — proceeds — formal requisites, 30-9-203.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

Priorities among conflicting security interests in same collateral, 30-9-312.

DEFINITIONAL

Documentary draft, 30-4-104.

Presenting bank, 30-4-105.

CHAPTER 4A

UNIFORM COMMERCIAL CODE FUNDS TRANSFERS

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Part 1
Subject Matter and Definitions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

Credit Transactions and Relationships, Title 31.

Montana Electronic Funds Transfer Act, Title 32, ch. 6.

30-4A-101. Short title. This chapter may be cited as Uniform Commercial Code—Funds Transfers.

History: En. Sec. 189, Ch. 410, L. 1991.

30-4A-102. Subject matter. Except as otherwise provided in 30-4A-108, this chapter applies to funds transfers defined in 30-4A-104.

History: En. Sec. 190, Ch. 410, L. 1991.

Cross-References

Banks and trust companies, title 32, ch 1.

National bank powers extended to state banks, 32-1-362.

Credit unions, Title 32, ch. 3.

Electronic funds transfer systems — applicability 32-6-102.

30-4A-103. Payment order — definitions. (1) In this chapter, the following definitions apply:

(a) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment;

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) "Beneficiary" means the person to be paid by the beneficiary's bank.

(c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or that otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) "Receiving bank" means the bank to which the sender's instruction is addressed.

(e) "Sender" means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank.

History: En. Sec. 191, Ch. 410, L. 1991.

30-4A-104. Funds transfer — definitions. In this chapter, the following definitions apply:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means:

(a) the receiving bank to which the payment order of the originator is issued if the originator is not a bank; or

(b) the originator if the originator is a bank.

History: En. Sec. 192, Ch. 410, L. 1991.

Cross-References

Electronic funds transfer — definitions, 32-6-103.

30-4A-105. Other definitions. (1) In this chapter, the following definitions apply:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove", with respect to a fact, means to meet the burden of establishing the fact (30-1-201(8)).

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". 30-4A-209.
"Beneficiary". 30-4A-103.
"Beneficiary's bank". 30-4A-103.
"Executed". 30-4A-301.
"Execution date". 30-4A-301.
"Funds transfer". 30-4A-104.
"Funds-transfer system rule". 30-4A-501.
"Intermediary bank". 30-4A-104.
"Originator". 30-4A-104.
"Originator's bank". 30-4A-104.
"Payment by beneficiary's bank to beneficiary". 30-4A-405.
"Payment by originator to beneficiary". 30-4A-406.
"Payment by sender to receiving bank". 30-4A-403.
"Payment date". 30-4A-401.
"Payment order". 30-4A-103.
"Receiving bank". 30-4A-103.
"Security procedure". 30-4A-201.
"Sender". 30-4A-103.

(3) The following definitions in chapter 4 apply to this chapter:

"Clearinghouse". 30-4-104.
"Item". 30-4-104.
"Suspends payments". 30-4-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 193, Ch. 410, L. 1991.

30-4A-106. Time payment order is received. (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in 30-1-201(27). A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this chapter refers to an execution date or payment date or state a day on which a receiving bank is required to take action and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.

History: **En. Sec. 194, Ch. 410, L. 1991.**

30-4A-107. Federal reserve regulations and operating circulars. Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

History: **En. Sec. 195, Ch. 410, L. 1991.**

Cross-References

National bank powers extended to state banks, 32-1-362.

30-4A-108. Exclusion of consumer transactions governed by federal law. This chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.) as amended from time to time.

History: **En. Sec. 196, Ch. 410, L. 1991.**

Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, title 30, ch. 14, part 1.

Montana Electronic Funds Transfer Act, Title 32, ch. 6.

Part 2

Issue and Acceptance of Payment Order

Part Cross-References

Banks and trust companies — operation and regulation, Title 32, ch. 1, part 4.

30-4A-201. Security procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of verifying that a payment order or communication amending or canceling a payment order is that of the customer or detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

History: **En. Sec. 197, Ch. 410, L. 1991.**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Civil subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Protection of privacy, 32-6-105.

Unauthorized disclosure of electronic funds transfer records, 32-6-106.

Personal identification number — restrictions, 32-6-306.

30-4A-202. Authorized and verified payment orders. (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if the security procedure is a commercially reasonable method of providing security against unauthorized payment orders and the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction

that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is considered to be commercially reasonable if:

(a) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer; and

(b) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in the customer's name and accepted by the bank in compliance with the security procedure chosen by the customer.

(4) The term "sender" in this chapter includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1) or if it is effective as the order of the customer under subsection (2).

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and in 30-4A-203(1)(a), rights and obligations arising under this section or 30-4A-203 may not be varied by agreement.

History: En. Sec. 198, Ch. 410, L. 1991.

Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal 32-1-440.

30-4A-203. Unenforceability of certain verified payment orders. (1) If an accepted payment order is not, under 30-4A-202(1), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to 30-4A-202(2), the following rules apply:

(a) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) (i) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person:

(A) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure; or

(B) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault.

(ii) Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders.

History: En. Sec. 199, Ch. 410, L. 1991.

Cross-References

Unauthorized transactions — liability, 32-6-303.

30-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order. (1) If a receiving bank accepts a payment order issued in the name of its customer as sender that is not authorized and not effective as the order of the customer under 30-4A-202 or not enforceable, in whole or in part, against the customer under 30-4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) may be fixed by agreement as stated in 30-1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement.

History: En. Sec. 200, Ch. 410, L. 1991.

Cross-References

Unauthorized transactions — liability, 32-6-303.

30-4A-205. Erroneous payment orders. (1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order erroneously instructed payment to a beneficiary not intended by the sender, erroneously instructed payment in an amount greater than the amount intended by the sender, or was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(a) If the sender proves that the sender or a person acting on behalf of the sender pursuant to 30-4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in subsections (1)(b) and (1)(c).

(b) Except as provided in subsection (1)(c), if the funds transfer is completed on the basis of an erroneous payment order described in subsection (1), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(c) If the funds transfer is completed on the basis of a payment order erroneously instructing payment in an amount greater than the amount intended by the sender, as described in subsection (1), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If the sender of an erroneous payment order described in subsection (1) is not obliged to pay all or part of the order and the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders.

History: **En. Sec. 201, Ch. 410, L. 1991.**

Cross-References

Unauthorized transactions — liability, 32-6-303.

30-4A-206. Transmission of payment order through funds-transfer or other communication system. (1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is considered to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

History: **En. Sec. 202, Ch. 410, L. 1991.**

Cross-References

Montana Electronic Funds Transfer Act, Title 32, ch. 6.

30-4A-207. Misdescription of beneficiary. (1) Subject to subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If a payment order described in subsection (2) is accepted, the originator's payment order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person identified by number as permitted by subsection (2)(a), the following rules apply:

(a) If the originator is a bank, the originator is obliged to pay its order.

(b) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3), the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

History: En. Sec. 203, Ch. 410, L. 1991.

30-4A-208. Misdescription of intermediary bank or beneficiary's bank. (1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number as follows:

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank, both by name and an identifying number, if the name and number identify different persons as follows:

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in 30-4A-302(1)(a).

History: En. Sec. 204, Ch. 410, L. 1991.

30-4A-209. Acceptance of payment order. (1) Subject to subsection (4), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4), a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) when the bank:

(i) pays the beneficiary as stated in 30-4A-405(1) or (2); or

(ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) when the bank receives payment of the entire amount of the sender's order pursuant to 30-4A-403(1)(a) or (1)(b); or

(c) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or if the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within 1 hour after that time or 1 hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (2)(b) or (2)(c) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank or until the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to 30-4A-211(2), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

History: En. Sec. 205, Ch. 410, L. 1991.

30-4A-210. Rejection of payment order. (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order:

(a) any means complying with the agreement is reasonable; and

(b) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on

the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to 30-4A-211(4) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are considered rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

History: En. Sec. 206, Ch. 410, L. 1991.

30-4A-211. Cancellation and amendment of payment order. (1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to subsection (1), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank as follows:

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) (i) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order or because of a mistake by a sender in the funds transfer that resulted in the issuance of a payment order:

(A) that is a duplicate of a payment order previously issued by the sender;

(B) that orders payment to a beneficiary not entitled to receive payment from the originator; or

(C) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator.

(ii) If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is considered to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order,

agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b).

History: **En. Sec. 207, Ch. 410, L. 1991.**

30-4A-212. Liability and duty of receiving bank regarding unaccepted payment order. If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this chapter but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action or refrain from taking action with respect to the order except as provided in this chapter or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in 30-4A-209, and liability is limited to that provided in this chapter. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this chapter or by express agreement.

History: **En. Sec. 208, Ch. 410, L. 1991.**

Part 3

Execution of Sender's Payment Order by Receiving Bank

Part Cross-References

Uniform Commercial Code — negotiable instruments, Title 30, ch. 3.

30-4A-301. Execution and execution date. (1) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank may be accepted but cannot be executed.

(2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

History: **En. Sec. 209, Ch. 410, L. 1991.**

30-4A-302. Obligations of receiving bank in execution of payment order. (1) Except as provided in subsections (2) through (4), if the receiving bank accepts a payment order pursuant to 30-4A-209(1), the bank has the following obligations in executing the order:

(a) (i) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning:

(A) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer; or

(B) the means by which payment orders are to be transmitted in the funds transfer.

(ii) If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may use any funds-transfer system if use of that system is reasonable in the circumstances and issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender:

(a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges; and

(b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

History: **En. Sec. 210, Ch. 410, L. 1991.**

30-4A-303. Erroneous execution of payment order. (1) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order or issues a payment order in execution of the sender's order and then issues a duplicate order is entitled to payment of the amount of the sender's order under 30-4A-402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under 30-4A-402(3) if that subsection is otherwise satisfied and the bank corrects its mistake by issuing an

additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

History: En. Sec. 211, Ch. 410, L. 1991.

30-4A-304. Duty of sender to report erroneously executed payment order. If the sender of a payment order that is erroneously executed as stated in 30-4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under 30-4A-402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

History: En. Sec. 212, Ch. 410, L. 1991.

30-4A-305. Liability for late or improper execution or failure to execute payment order. (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of 30-4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of 30-4A-302 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (1), resulting from the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank but are not otherwise recoverable.

(5) Reasonable attorney fees are recoverable if demand for compensation under subsection (1) or (2) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) and the agreement does not provide for damages, reasonable attorney fees are recoverable if demand for compensation under subsection (4) is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) may not be varied by agreement.

History: En. Sec. 213, Ch. 410, L. 1991.

Part 4

Payment

Part Cross-References

Uniform Commercial Code — bank deposits and collections, Title 30, ch. 4.

30-4A-401. Payment date. "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

History: En. Sec. 214, Ch. 410, L. 1991.

30-4A-402. Obligation of sender to pay receiving bank. (1) This section is subject to 30-4A-205 and 30-4A-207.

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to 30-4A-303 and to subsection (5) of this section. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in 30-4A-204 and 30-4A-304, interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in subsection (3) and an intermediary bank is obliged to refund payment as stated in subsection (4) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in 30-4A-302(1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4).

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) or to receive refund under subsection (4) may not be varied by agreement.

History: **En. Sec. 215, Ch. 410, L. 1991.**

30-4A-403. Payment by sender to receiving bank. (1) Payment of the sender's obligation under 30-4A-402 to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender credited an account of the receiving bank with the sender or caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under 30-4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank must be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1), the time when payment of the sender's obligation under 30-4A-402(2) or (3) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

History: **En. Sec. 216, Ch. 410, L. 1991.**

30-4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary. (1) Subject to 30-4A-211(5) and 30-4A-405(4) and (5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (1) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

History: En. Sec. 217, Ch. 410, L. 1991.

30-4A-405. Payment by beneficiary's bank to beneficiary. (1) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under 30-4A-404(1) occurs when and to the extent:

(a) the beneficiary is notified of the right to withdraw the credit;

(b) the bank lawfully applies the credit to a debt of the beneficiary; or

(c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under 30-4A-404(1) occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) (a) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if:

(i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated;

(ii) the beneficiary, the beneficiary's bank, and the originator's bank agreed to be bound by the rule; and

(iii) the beneficiary's bank did not receive payment of the payment order that it accepted.

(b) If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under 30-4A-406.

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that nets obligations multilaterally among participants and has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the

obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer:

(a) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance;

(b) the beneficiary's bank is entitled to recover payment from the beneficiary;

(c) no payment by the originator to the beneficiary occurs under 30-4A-406; and

(d) subject to 30-4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under 30-4A-402(3) because the funds transfer has not been completed.

History: En. Sec. 218, Ch. 410, L. 1991.

30-4A-406. Payment by originator to beneficiary — discharge of underlying obligation. (1) Subject to 30-4A-211(5) and 30-4A-405(4) and (5), the originator of a funds transfer pays the beneficiary of the originator's payment order:

(a) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer; and

(b) in an amount equal to the amount of the order accepted by the beneficiary's bank but not more than the amount of the originator's order.

(2) (a) If payment under subsection (1) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless:

(i) the payment under subsection (1) was made by a means prohibited by the contract of the beneficiary with respect to the obligation;

(ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment;

(iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary; and

(iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract.

(b) If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under 30-4A-404(1).

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is considered to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

History: En. Sec. 219, Ch. 410, L. 1991.

Part 5
Miscellaneous Provisions

Part Cross-References

Automated teller machines — additional standards, 32-6-304.

Personal identification number — restrictions, 32-6-306.

30-4A-501. Variation by agreement and effect of funds-transfer system rule. (1) Except as otherwise provided in this chapter, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) (a) "Funds-transfer system rule" means a rule of an association of banks:

(i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders; or

(ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank.

(b) Except as otherwise provided in this chapter, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this chapter and indirectly affects another party to the funds transfer that does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in 30-4A-404(3), 30-4A-405(4), and 30-4A-507(3).

History: En. Sec. 220, Ch. 410, L. 1991.

Cross-References

Banks and trust companies, title 32, ch. 1.

Credit unions, Title 32, ch. 3.

Montana Electronic Funds Transfer Act, Title 32, ch. 6.

30-4A-502. Creditor process served on receiving bank — setoff by beneficiary's bank. (1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order, the balance in the authorized account is considered to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

History: En. Sec. 221, Ch. 410, L. 1991.

30-4A-503. Injunction or restraining order with respect to funds transfer. (1) For proper cause and in compliance with applicable law, a court may restrain:

(a) a person from issuing a payment order to initiate a funds transfer;

(b) an originator's bank from executing the payment order of the originator; or

(c) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds.

(2) A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

History: En. Sec. 222, Ch. 410, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

30-4A-504. Order in which items and payment orders may be charged to account — order of withdrawals from account. (1) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

History: En. Sec. 223, Ch. 410, L. 1991.

30-4A-505. Preclusion of objection to debit of customer's account. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within 1 year after the notification was received by the customer.

History: En. Sec. 224, Ch. 410, L. 1991.

30-4A-506. Rate of interest. (1) If, under this chapter, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined:

(a) by agreement of the sender and receiving bank; or

(b) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1), the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by 360. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

History: En. Sec. 225, Ch. 410, L. 1991.

30-4A-507. Choice of law. (1) The following rules apply unless the affected parties otherwise agree or subsection (3) applies:

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in subsection (1) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) (a) A funds-transfer system rule may select the law of a particular jurisdiction to govern:

(i) the rights and obligations between participating banks with respect to payment orders transmitted or processed through the system; or

(ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system.

(b) A choice of law made pursuant to subsection (3)(a)(i) is binding on participating banks. A choice of law made pursuant to subsection (3)(a)(ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) and a choice-of-law rule under subsection (3), the agreement under subsection (2) prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

History: En. Sec. 226, Ch. 410, L. 1991.

CHAPTER 5

UNIFORM COMMERCIAL CODE
LETTERS OF CREDIT

Part 1 — Letters of Credit

30-5-101. Short title.
30-5-102 through 30-5-117. Repealed.
30-5-118. Security interest of issuer or nominated person.
30-5-119 through 30-5-121 reserved.
30-5-122. Definitions.
30-5-123. Scope.
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30-5-125. Consideration.
30-5-126. Issuance, amendment, cancellation, and duration.
30-5-127. Confirmer, nominated person, and adviser.
30-5-128. Issuer's rights and obligations.
30-5-129. Fraud and forgery.
30-5-130. Warranties.

30-5-131. Remedies.
30-5-132. Transfer of letter of credit.
30-5-133. Transfer by operation of law.
30-5-134. Assignment of proceeds.
30-5-135. Statute of limitations.
30-5-136. Choice of law and forum.
30-5-137. Subrogation of issuer, applicant, and nominated person.

Part 1

Letters of Credit

Part Cross-References

Acceptance and issuance of drafts and letters of credit, 32-1-437.

30-5-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Letters of Credit.

History: En. Sec. 5-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-101.

Cross-References

DEFINITIONAL

Definition and operation of acceptance, 30-3-410.

30-5-102 through 30-5-117. Repealed. Sec. 88, Ch. 536, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

30-5-102. En. Sec. 5-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-102.

30-5-103. En. Sec. 5-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-103.

30-5-104. En. Sec. 5-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-104.

30-5-105. En. Sec. 5-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-105.

30-5-106. En. Sec. 5-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-106.

30-5-107. En. Sec. 5-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-107.

30-5-108. En. Sec. 5-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-108.

30-5-109. En. Sec. 5-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-109.

30-5-110. En. Sec. 5-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-110.

30-5-111. En. Sec. 5-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-111.

30-5-112. En. Sec. 5-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-112.

30-5-113. En. Sec. 5-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-113.

30-5-114. En. Sec. 5-114, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-114; amd. Sec. 8, Ch. 402, L. 1983.

30-5-115. En. Sec. 5-115, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-115.

30-5-116. En. Sec. 5-116, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-116; amd. Sec. 9, Ch. 402, L. 1983.

30-5-117. En. Sec. 5-117, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-117.

30-5-118. *(Effective July 1, 2001)* **Security interest of issuer or nominated person.** (1) An issuer or nominated person has a security interest in a document presented under a letter of credit and any identifiable proceeds of the collateral to the extent that the issuer or nominated person honors or gives value for the presentation.

(2) Subject to subsection (2)(c), as long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (1), the security interest continues and is subject to chapter 9, but:

(a) a security agreement is not necessary to make the security interest enforceable under 30-9-213(2)(c);

(b) if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(c) if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, so long as the debtor does not have possession of the document, the security interest is perfected and has priority over a conflicting security interest in the document.

History: En. Sec. 161, Ch. 305, L. 1999.

30-5-119 through 30-5-121 reserved.

30-5-122. Definitions. (1) In this chapter:

(a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(b) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(f) (i) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:

(A) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in 30-5-128(5); and

(B) which is capable of being examined for compliance with the terms and conditions of the letter of credit.

(ii) A document may not be oral.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned.

(h) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) upon payment;

(ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(j) "Letter of credit" means a definite undertaking that satisfies the requirements of 30-5-124 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(k) "Nominated person" means a person whom the issuer:

(i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit; and

(ii) undertakes by agreement or custom and practice to reimburse.

(l) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(n) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(2) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Accept" or "Acceptance" 30-3-410

"Value" 30-3-303, 30-4-209

(3) Chapter 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 6, Ch. 536, L. 1997.

30-5-123. Scope. (1) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(3) With the exception of this subsection, subsections (1) and (4), 30-5-122(1)(i) and (1)(j), 30-5-126(4), and 30-5-134(4), and except to the extent prohibited in 30-1-102(3) and 30-5-137(4), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

History: En. Sec. 7, Ch. 536, L. 1997.

30-5-124. Formal requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated:

(1) by a signature; or

(2) in accordance with the agreement of the parties or the standard practice referred to in 30-5-128(5).

History: En. Sec. 8, Ch. 536, L. 1997.

30-5-125. Consideration. Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

History: En. Sec. 9, Ch. 536, L. 1997.

30-5-126. Issuance, amendment, cancellation, and duration. (1) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation

to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(3) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(4) A letter of credit that states that it is perpetual expires 5 years after its stated date of issuance, or if none is stated, after the date on which it is issued.

History: En. Sec. 10, Ch. 536, L. 1997.

30-5-127. Confirmer, nominated person, and adviser. (1) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(3) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (3). The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

History: En. Sec. 11, Ch. 536, L. 1997.

30-5-128. Issuer's rights and obligations. (1) Except as otherwise provided in 30-5-129, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in 30-5-133 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(a) to honor;

(b) if the letter of credit provides for honor to be completed more than 7 business days after presentation, to accept a draft or incur a deferred obligation; or

(c) to give notice to the presenter of discrepancies in the presentation.

(3) Except as otherwise provided in subsection (4), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(4) Failure to give the notice specified in subsection (2) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in 30-5-129(1) or expiration of the letter of credit before presentation.

(5) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the

standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(6) An issuer is not responsible for:

(a) the performance or nonperformance of the underlying contract, arrangement, or transaction;

(b) an act or omission of others; or

(c) observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5).

(7) If an undertaking constituting a letter of credit under 30-5-122(1)(j) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(8) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(9) An issuer that has honored a presentation as permitted or required by this chapter:

(a) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(b) takes the documents free of claims of the beneficiary or presenter;

(c) is precluded from asserting a right of recourse on a draft under 30-3-414 and 30-3-415;

(d) except as otherwise provided in 30-5-130 and 30-5-137, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(e) is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

History: En. Sec. 12, Ch. 536, L. 1997.

30-5-129. Fraud and forgery. (1) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(a) the issuer shall honor the presentation, if honor is demanded by:

(i) a nominated person who has given value in good faith and without notice of forgery or material fraud;

(ii) a confirmer who has honored its confirmation in good faith;

(iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person; or

(iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(b) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(2) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(a) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(b) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(c) all of the conditions to entitle a person to the relief under the law of this state have been met; and

(d) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (1)(a).

History: En. Sec. 13, Ch. 536, L. 1997.

30-5-130. Warranties. (1) If its presentation is honored, the beneficiary warrants:

(a) to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in 30-5-129(1); and

(b) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(2) The warranties in subsection (1) are in addition to warranties arising under chapters 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those chapters.

History: En. Sec. 14, Ch. 536, L. 1997.

30-5-131. Remedies. (1) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(3) If an adviser or nominated person other than a confirmer breaches an obligation under this chapter or an issuer breaches an obligation not covered in subsection (1) or (2), a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and (2).

(4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3) shall pay interest on the amount owed from the date of wrongful dishonor or other appropriate date.

(5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this chapter.

(6) Damages that would otherwise be payable by a party for breach of an obligation under this chapter may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

History: En. Sec. 15, Ch. 536, L. 1997.

30-5-132. Transfer of letter of credit. (1) Except as otherwise provided in 30-5-133, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(a) the transfer would violate applicable law; or

(b) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in 30-5-128(5) or is otherwise reasonable under the circumstances.

History: En. Sec. 16, Ch. 536, L. 1997.

30-5-133. Transfer by operation of law. (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (5), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in 30-5-128(5) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) has the consequences specified in 30-5-128(9) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of 30-5-129.

(5) An issuer whose rights of reimbursement are not covered by subsection (4) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (2).

(6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

History: En. Sec. 17, Ch. 536, L. 1997.

30-5-134. Assignment of proceeds. (1) (a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit.

(b) The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(4) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(5) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(6) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by chapter 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by chapter 9 or other law.

History: En. Sec. 18, Ch. 536, L. 1997.

30-5-135. Statute of limitations. An action to enforce a right or obligation arising under this chapter must be commenced within 1 year after the expiration date of the relevant letter of credit or 1 year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

History: En. Sec. 19, Ch. 536, L. 1997.

30-5-136. Choice of law and forum. (1) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in 30-5-124 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(2) Unless subsection (1) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(3) (a) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject.

(b) The rules of custom and practice govern except to the extent of any conflict with the nonvariable provisions specified in 30-5-123(3) if:

(i) this chapter would govern the liability of an issuer, nominated person, or adviser under subsection (1) or (2);

(ii) the relevant undertaking incorporates rules of custom or practice; and

(iii) there is conflict between this chapter and those rules as applied to that undertaking.

(4) If there is conflict between this chapter and chapter 3, 4, 4A, or 9, this chapter governs.

(5) The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1).

History: En. Sec. 20, Ch. 536, L. 1997.

30-5-137. Subrogation of issuer, applicant, and nominated person. (1) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (1).

(3) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(a) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(b) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(c) the applicant to same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (1) and (2) do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (3) do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

History: En. Sec. 21, Ch. 536, L. 1997.

CHAPTER 6

UNIFORM COMMERCIAL CODE BULK TRANSFERS (Repealed)

Chapter Compiler's Comments

Sections Repealed:

30-6-101 through 30-6-111. Repealed. Sec. 230, Ch. 410, L. 1991.

30-6-112. Repealed. Sec. 85, Ch. 10, L. 1993.

Histories of Repealed Sections:

30-6-101. En. Sec. 6-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-101.

30-6-102. En. Sec. 6-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-102.

30-6-103. En. Sec. 6-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-103.

30-6-104. En. Sec. 6-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-104.

30-6-105. En. Sec. 6-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-105.

30-6-106. En. Sec. 6-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-106.

30-6-107. En. Sec. 6-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-107.

30-6-108. En. Sec. 6-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-108.

30-6-109. En. Sec. 6-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-109.

30-6-110. En. Sec. 6-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-110.

30-6-111. En. Sec. 6-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-111.

30-6-112. En. Sec. 227, Ch. 410, L. 1991.

CHAPTER 6

UNIFORM COMMERCIAL CODE BULK TRANSFERS (Repealed)

Chapter Compiler's Comments

Sections Repealed:

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30-6-112. Repealed. Sec. 85, Ch. 10, L. 1993.

Histories of Repealed Sections:

30-6-101. En. Sec. 6-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-101.

30-6-102. En. Sec. 6-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-102.

30-6-103. En. Sec. 6-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-103.

30-6-104. En. Sec. 6-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-104.

30-6-105. En. Sec. 6-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-105.

30-6-106. En. Sec. 6-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-106.

30-6-107. En. Sec. 6-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-107.

30-6-108. En. Sec. 6-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-108.

30-6-109. En. Sec. 6-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-109.

30-6-110. En. Sec. 6-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-110.

30-6-111. En. Sec. 6-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-111.

30-6-112. En. Sec. 227, Ch. 410, L. 1991.

CHAPTER 7

UNIFORM COMMERCIAL CODE — WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

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Part 1

General

30-7-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Documents of Title.

History: En. Sec. 7-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-101.

30-7-102. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in 30-1-201(15).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate". 30-7-501.

"Person entitled under the document". 30-7-403(4).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Contract for sale". 30-2-106.

"Overseas". 30-2-323.

"Receipt" of goods. 30-2-103.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: **En. Sec. 7-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-102; amd. Sec. 1, Ch. 137, L. 1979.**

Cross-References

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling, 30-7-301.

DEFINITIONAL

Bill of lading, 30-1-201.

Contract, 30-1-201.

Contract for sale, 30-2-106.

Delivery, 30-1-201.

Document of title, 30-1-201.

Person, 30-1-201.

Purchase, 30-1-201.

Receipt of goods, 30-2-103.

Right, 30-1-201.

Warehouse receipt, 30-1-201.

Written, 30-1-201.

30-7-103. Relation of chapter to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto.

History: **En. Sec. 7-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-103.**

Cross-References

Laws not repealed, 30-1-111.

Who may issue warehouse receipt — storage under government bond, 30-7-201.

Form of warehouse receipt — essential terms — optional terms, 30-7-202.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Termination of storage at warehouseman's option, 30-7-206.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

30-7-104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title. (1) A warehouse receipt, bill of lading or other document of title is negotiable:

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

History: En. Sec. 7-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-104.

Cross-References

GENERAL

Rights acquired by due negotiation, 30-7-502.

DEFINITIONAL

Bearer, 30-1-201.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Overseas, 30-2-323.
Person, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-105. Construction against negative implication. The omission from either Part 2 or Part 3 of this chapter of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

History: En. Sec. 7-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-105.

Part 2

Warehouse Receipts — Special Provisions

Part Cross-References

Grain and commodity storage and transportation, Title 69, ch. 14, part 9.

Applicability of U.C.C. to law of deposits for hire, 70-6-401.

Applicability of U.C.C. to common carriers, merchants, and warehousemen, 70-9-401.

30-7-201. Who may issue a warehouse receipt — storage under government bond. (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

History: En. Sec. 7-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-201.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

Forgery, 45-6-325.

DEFINITIONAL

Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-202. Form of warehouse receipt — essential terms — optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (30-7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this code and do not impair his obligation of delivery (30-7-403) or his duty of care (30-7-204). Any contrary provisions shall be ineffective.

History: **En. Sec. 7-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-202.**

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Security interest, 30-1-201.
Term, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.
Written, 30-1-201.

30-7-203. Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

History: **En. Sec. 7-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-203.**

Cross-References

GENERAL

Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling, 30-7-301.

Forgery, 45-6-325.

DEFINITIONAL

Conspicuous, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Notice, 30-1-201.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Value, 30-1-201.

30-7-204. Duty of care — contractual limitation of warehouseman's liability. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part

or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

History: En. Sec. 7-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-204.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Bailment — deposit, Title 70, ch. 6.

DEFINITIONAL

Action, 30-1-201.
Agreed, 30-1-201.
Goods, 30-7-102.
Reasonable time, 30-1-204.
Sign, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.
Written, 30-1-201.

30-7-205. Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

History: En. Sec. 7-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-205.

Cross-References

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Document of title to goods defeated in certain cases, 30-7-503.

Protection of buyers of goods, 30-9-307.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.
Delivery, 30-1-201.
Duly negotiate, 30-7-501.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-206. Termination of storage at warehouseman's option. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (30-7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a

reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

History: En. Sec. 7-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-206.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Penalty for delivering goods without obtaining possession of outstanding negotiable receipt, 30-7-705.

DEFINITIONAL

Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Notice, 30-1-201.
Person, 30-1-201.
Reasonable time, 30-1-204.
Value, 30-1-201.
Warehouseman, 30-7-102.

30-7-207. Goods must be kept separate — fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

History: En. Sec. 7-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-207.

Cross-References

GENERAL

Title under warehouse receipt defeated in certain cases, 30-7-205.

DEFINITIONAL

Delivery, 30-1-201.
Duly negotiate, 30-7-501.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-208. Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

History: En. Sec. 7-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-208.

Cross-References

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

DEFINITIONAL

Issuer, 30-7-102.
Notice, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-209. Lien of warehouseman. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Chapter on Secured Transactions (Chapter 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under 30-7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

History: En. Sec. 7-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-209.

Cross-References

GENERAL

Manner of seller's tender of delivery, 30-2-503.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Policy and subject matter of chapter, 30-9-102.

Priority of certain liens arising by operation of law, 30-9-310.

Priorities among conflicting security interests in same collateral, 30-9-312.

Liens generally, Title 71, ch. 3, part 1.

DEFINITIONAL

Deliver, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Money, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Right, 30-1-201.
Security interest, 30-1-201.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-210. Enforcement of warehouseman's lien. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

History: En. Sec. 7-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-210; amd. Sec. 2, Ch. 137, L. 1979.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Penalty for delivering goods without obtaining possession of outstanding negotiable receipt, 30-7-705.

Liens generally, Title 71, ch. 3, part 1.

DEFINITIONAL

Bill of lading, 30-1-201.
Conspicuous, 30-1-201.
Creditor, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Notifies, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Warehouseman, 30-7-102.

Part 3
Bills of Lading — Special Provisions

Part Cross-References

Carrier's contract — applicability of U.C.C., 69-11-105.

30-7-301. Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling. (1) A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

History: En. Sec. 7-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-301.

Cross-References

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

Forgery, 45-6-325.

Issuance of bills of lading by railroad station agents — penalty, 69-14-215.

DEFINITIONAL

Bill of lading, 30-1-201.
Consignee, 30-7-102.
Document, 30-7-102.
Duly negotiate, 30-7-501.
Good faith, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Issuer, 30-7-102.
Notice, 30-1-201.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Value, 30-1-201.

30-7-302. Through bills of lading and similar documents. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

History: En. Sec. 7-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-302.

Cross-References

GENERAL

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

DEFINITIONAL

Agreement, 30-1-201.
Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Issuer, 30-7-102.
Overseas, 30-2-323.
Party, 30-1-201.
Person, 30-1-201.

30-7-303. Diversion — reconsignment — change of instructions. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

(a) the holder of a negotiable bill; or

(b) the consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

History: En. Sec. 7-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-303.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Rights acquired in absence of due negotiation — effect of diversion — seller's stoppage of delivery, 30-7-504.

DEFINITIONAL

Bailee, 30-7-102.

Bill of lading, 30-1-201.
Consignee, 30-7-102.
Consignor, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Term, 30-1-201.

30-7-304. Bills of lading in a set. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this chapter against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

History: En. Sec. 7-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-304.

Cross-References

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Duly negotiate, 30-7-501.
Good faith, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Issuer, 30-7-102.
Overseas, 30-2-323.
Person, 30-1-201.
Receipt of goods, 30-2-103.

30-7-305. Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

History: En. Sec. 7-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-305.

Cross-References

DEFINITIONAL

Bill of lading, 30-1-201.
Consignor, 30-7-102.
Goods, 30-7-102.
Issuer, 30-7-102.
Receipt of goods, 30-2-103.

30-7-306. Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

History: En. Sec. 7-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-306.

Cross-References

DEFINITIONAL

Bill of lading, 30-1-201.
Issuer, 30-7-102.

30-7-307. Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

History: En. Sec. 7-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-307.

Cross-References

GENERAL

Lien of warehouseman, 30-7-209.

Policy and subject matter of chapter, 30-9-102.

Priority of certain liens arising by operation of law, 30-9-310.

Holder of lien not entitled to compensation, 71-3-112.

DEFINITIONAL

Bill of lading, 30-1-201.
Consignor, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.

30-7-308. Enforcement of carrier's lien. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this chapter.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of 30-7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

History: **En. Sec. 7-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-308.**

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Bill of lading, 30-1-201.
Creditor, 30-1-201.
Delivery, 30-1-201.
Good faith, 30-1-201.
Goods, 30-7-102.
Notifies, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.

30-7-309. Duty of care — contractual limitation of carrier's liability. (1) A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

History: **En. Sec. 7-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-309.**

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Railroads — notice of injury to transported livestock, 69-14-216.

DEFINITIONAL

Action, 30-1-201.
Bill of lading, 30-1-201.
Consignor, 30-7-102.
Document, 30-7-102.
Goods, 30-7-102.
Value, 30-1-201.

Part 4

Warehouse Receipts and Bills of Lading General Obligations

30-7-401. Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this chapter on an issuer apply to a document of title regardless of the fact that:

(a) the document may not comply with the requirements of this chapter or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

History: **En. Sec. 7-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-401.**

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Liability for nonreceipt or misdescription, 30-7-203.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Liability for nonreceipt or misdescription —"said to contain" — "shippers load and count" — improper handling, 30-7-301.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

DEFINITIONAL

Bailee, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-402. Duplicate receipt or bill — overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

History: En. Sec. 7-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-402.

Cross-References

GENERAL

Goods must be kept separate — fungible goods, 30-7-207.

Bills of lading in a set, 30-7-304.

Document of title to goods defeated in certain cases, 30-7-503.

Lost and missing documents, 30-7-601.

Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate", 30-7-703.

Forgery, 45-6-325.

DEFINITIONAL

Bill of lading, 30-1-201.
Conspicuous, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Right, 30-1-201.

30-7-403. Obligation of warehouseman or carrier to deliver — excuse. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Chapter on Sales (30-2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this chapter (30-7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under 30-7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.

History: En. Sec. 7-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-403.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Rights acquired by due negotiation, 30-7-502.

Delivery of freight, 69-11-404.

DEFINITIONAL

Bailee, 30-7-102.
Conspicuous, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Goods, 30-7-102.
Person, 30-1-201.
Receipt of goods, 30-2-103.
Right, 30-1-201.
Terms, 30-1-201.
Warehouseman, 30-7-102.
Written, 30-1-201.

30-7-404. No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

History: En. Sec. 7-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-404.

Cross-References

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Document of title, 30-1-201.
Good faith, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Receipt of goods, 30-2-103.
Term, 30-1-201.

Part 5

Warehouse Receipts and Bills of Lading Negotiation and Transfer

Part Cross-References

Issuance of bills of lading by railroad station agents, 69-14-215.

30-7-501. Form of negotiation and requirements of "due negotiation". (1) A negotiable document of title running to the order of a named person is negotiated by his endorsement and delivery. After his endorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been endorsed to a specified person requires endorsement by the special endorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Endorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

History: En. Sec. 7-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-501.

Cross-References

GENERAL

Rights acquired by due negotiation, 30-7-502.

Document of title to goods defeated in certain cases, 30-7-503.

Protection of purchasers of instruments and documents, 30-9-309.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Good faith, 30-1-201.
Holder, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.

30-7-502. Rights acquired by due negotiation. (1) Subject to the following section and to the provisions of 30-7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

History: En. Sec. 7-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-502.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Document of title to goods defeated in certain cases, 30-7-503.

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Delivery order, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Fungible, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Issuer, 30-7-102.
Person, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-503. Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) delivered or entrusted them or any document of title covering them to the bailor or the bailor's nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (30-7-403) or with power of disposition under this code (30-2-403 and [30-9-307] 30-9-340) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or the bailor's nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver. *(Bracketed reference deleted July 1, 2001.)*

History: En. Sec. 7-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-503; amd. Sec. 142, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 near end of (1)(a) substituted "30-9-340" for "30-9-307"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

GENERAL

Title under warehouse receipt defeated in certain cases, 30-7-205.

Duplicate receipt or bill — overissue, 30-7-402.

No liability for good faith delivery pursuant to receipt or bill, 30-7-404.

Form of negotiation and requirements of "due negotiation", 30-7-501.

Rights acquired in absence of due negotiation — effect of diversion — seller's stoppage of delivery, 30-7-504.

Protection of purchasers of instruments, documents, and securities, 30-9-309.

DEFINITIONAL

Bill of lading, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Delivery order, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Goods, 30-7-102.
Person, 30-1-201.
Right, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-504. Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery. (1) A transferee of a document, whether negotiable or nonnegotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) by those creditors of the transferor who could treat the sale as void under 30-2-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a nonnegotiable document may be stopped by a seller under 30-2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

History: En. Sec. 7-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-504.

Cross-References

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Diversion — reconsignment — change of instructions, 30-7-303.

Obligation of carrier or warehouseman to deliver, 30-7-403.

Delivery without endorsement — right to compel endorsement, 30-7-506.

DEFINITIONAL

Bailee, 30-7-102.

Bill of lading, 30-1-201.

Buyer in ordinary course of business, 30-1-201.

Consignee, 30-7-102.

Consignor, 30-7-102.

Creditor, 30-1-201.

Delivery, 30-1-201.

Document, 30-7-102.

Duly negotiate, 30-7-501.

Good faith, 30-1-201.

Goods, 30-7-102.

Honor, 30-1-201.

Notification, 30-1-201.

Purchaser, 30-1-201.

Rights, 30-1-201.

30-7-505. Endorser not a guarantor for other parties. The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

History: En. Sec. 7-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-505.

Cross-References

GENERAL

Rights acquired by due negotiation, 30-7-502.

DEFINITIONAL

Bailee, 30-7-102.

Document of title, 30-1-201.

Party, 30-1-201.

30-7-506. Delivery without endorsement — right to compel endorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied.

History: En. Sec. 7-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-506.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Form of negotiation and requirements of "due negotiation", 30-7-501.

Endorser not guarantor for other parties, 30-7-505.

DEFINITIONAL

Document of title, 30-1-201.

Rights, 30-1-201.

30-7-507. Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

History: En. Sec. 7-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-507.

Cross-References

GENERAL

Warranty of title and against infringement — buyer's obligation against infringement, 30-2-312.

Express warranties by affirmation, promise, description, or sample, 30-2-313.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Warranties of collecting bank as to documents, 30-7-508.

DEFINITIONAL

Document, 30-7-102.

Document of title, 30-1-201.

Genuine, 30-1-201.

Goods, 30-7-102.
Person, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.

30-7-508. Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

History: En. Sec. 7-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-508.

Cross-References

GENERAL

Effect of instructions, 30-4-203.

Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.

Presentment of "on arrival" drafts, 30-4-502.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

Warranties on negotiation or transfer of receipt or bill, 30-7-507.

DEFINITIONAL

Collecting bank, 30-4-105.
Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.

30-7-509. Receipt or bill — when adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Chapters on Sales (Chapter 2) and on Letters of Credit (Chapter 5).

History: En. Sec. 7-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-509.

Cross-References

DEFINITIONAL

Contract for sale, 30-2-106.
Document, 30-7-102.

Part 6

Warehouse Receipts and Bills of Lading Miscellaneous Provisions

30-7-601. Lost and missing documents. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within 1 year after delivery.

History: En. Sec. 7-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-601.

Cross-References

GENERAL

Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate", 30-7-703.

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.

Good faith, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-7-201.

30-7-602. Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

History: En. Sec. 7-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-602.

Cross-References

GENERAL

Document of title to goods defeated in certain cases, 30-7-503.

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Notice, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Value, 30-1-201.

30-7-603. Conflicting claims — interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.

History: En. Sec. 7-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-603.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Action, 30-1-201.
Bailee, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Reasonable time, 30-1-204.

Part 7

Penalties

30-7-701. Penalty for issuing receipt when goods have not been delivered. A warehouseman or any officer, agent, or servant of a warehouseman who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years or by a fine not exceeding $5,000 or by both.

History: En. Sec. 50, Ch. 154, L. 1917; re-en. Sec. 4128, R.C.M. 1921; re-en. Sec. 4128, R.C.M. 1935; R.C.M. 1947, 88-150.

30-7-702. Penalty for fraudulently issuing receipt. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 51, Ch. 154, L. 1917; re-en. Sec. 4129, R.C.M. 1921; re-en. Sec. 4129, R.C.M. 1935; R.C.M. 1947, 88-151.

Cross-References

Forgery, 45-6-325.

Grain storage — fraudulent receipt, 80-4-428.

30-7-703. Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate". A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate", except in the case of a lost, stolen, or destroyed receipt after proceedings as provided for in 30-7-601, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years or by a fine not exceeding $5,000 or by both.

History: En. Sec. 52, Ch. 154, L. 1917; re-en. Sec. 4130, R.C.M. 1921; re-en. Sec. 4130, R.C.M. 1935; amd. Sec. 11-154, Ch. 264, L. 1963; R.C.M. 1947, 88-152.

Cross-References

Forgery, 45-6-325.

30-7-704. Penalty for issuing negotiable receipt for goods which warehouseman owns. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 53, Ch. 154, L. 1917; re-en. Sec. 4131, R.C.M. 1921; re-en. Sec. 4131, R.C.M. 1935; R.C.M. 1947, 88-153.

Cross-References

Forgery, 45-6-325.

30-7-705. Penalty for delivering goods without obtaining possession of outstanding negotiable receipt. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except where the receipt has been lost, stolen, or destroyed or the goods have been lawfully sold or disposed of to satisfy a warehouseman's lien or because of their perishable or hazardous nature, be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year, or by a fine not exceeding $1,000 or by both.

History: En. Sec. 54, Ch. 154, L. 1917; re-en. Sec. 4132, R.C.M. 1921; re-en. Sec. 4132, R.C.M. 1935; amd. Sec. 11-155, Ch. 264, L. 1963; R.C.M. 1947, 88-154.

30-7-706. Penalty for negotiating receipt for goods with defective title. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction, shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 55, Ch. 154, L. 1917; re-en. Sec. 4133, R.C.M. 1921; re-en. Sec. 4133, R.C.M. 1935; R.C.M. 1947, 88-155.

CHAPTER 8

UNIFORM COMMERCIAL CODE INVESTMENT SECURITIES

Part 1 — Short Title and General Matters

30-8-101. Short title.
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30-8-126. Securities intermediary as purchaser for value.

Part 2 — Issue and Issuer

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30-8-213. Staleness as notice of defect or defense.
30-8-214. Effect of issuer's restriction on transfer.
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30-8-219. Issuer's lien.
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30-8-301 through 30-8-321. Repealed.
30-8-322 through 30-8-330 reserved.
30-8-331. Delivery.
30-8-332. Rights of purchaser.
30-8-333. Protected purchaser.
30-8-334. Indorsement.
30-8-335. Instruction.
30-8-336. Effect of guaranteeing signature, indorsement, or instruction.
30-8-337. Purchaser's right to requisites for registration of transfer.

Part 4 — Registration

30-8-401 through 30-8-408. Repealed.
30-8-409 and 30-8-410 reserved.
30-8-411. Duty of issuer to register transfer.
30-8-412. Assurance that indorsement or instruction is effective.
30-8-413. Demand that issuer not register transfer.
30-8-414. Wrongful registration.
30-8-415. Replacement of lost, destroyed, or wrongfully taken security certificate.
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30-8-503. Property interest of entitlement holder in financial asset held by securities intermediary.
30-8-504. Duty of securities intermediary to maintain financial asset.
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30-8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder.
30-8-507. Duty of securities intermediary to comply with entitlement order.
30-8-508. Duty of securities intermediary to change entitlement holder's position to other form of security holding.
30-8-509. Specification of duties of securities intermediary by other statute or regulation — manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.
30-8-510. Rights of purchaser of security entitlement from entitlement holder.
30-8-511. Priority among security interests and entitlement holders.

Chapter Cross-References

Registration of public obligations, Title 17, ch. 5, part 11.

Securities regulation, Title 30, ch. 10.

Part 1

Short Title and General Matters

Part Cross-References

Municipal revenue bonds — interim receipts or certificates, 7-7-4435.

Refunding revenue bonds to be fully negotiable, 7-7-4608.

Parking commissions — bonds to be negotiable, 7-14-4661.

30-8-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Investment Securities.

History: En. Sec. 8-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-101.

30-8-102 through 30-8-108. Repealed. Sec. 88, Ch. 536, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

30-8-102. En. Sec. 8-102, Ch. 264, L. 1963; amd. Sec. 1, Ch. 278, L. 1977; R.C.M. 1947, 87A-8-102; amd. Sec. 10, Ch. 402, L. 1983.

30-8-103. En. Sec. 8-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-103; amd. Sec. 11, Ch. 402, L. 1983.

30-8-104. En. Sec. 8-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-104; amd. Sec. 12, Ch. 402, L. 1983.

30-8-105. En. Sec. 8-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-105; amd. Sec. 13, Ch. 402, L. 1983.

30-8-106. En. Sec. 8-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-106; amd. Sec. 14, Ch. 402, L. 1983.

30-8-107. En. Sec. 8-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-107; amd. Sec. 15, Ch. 402, L. 1983.

30-8-108. En. Sec. 16, Ch. 402, L. 1983.

30-8-109 through 30-8-111 reserved.

30-8-112. Definitions. (1) In this chapter:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form" as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) a person that is registered as a "clearing agency" under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of 30-8-501(2)(b) or (2)(c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) (i) "Financial asset," except as otherwise provided in 30-8-113, means:

(A) a security;

(B) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(C) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.

(ii) As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in 30-8-113, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in part 5 of this chapter.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Appropriate person" 30-8-117
"Control" 30-8-116
"Delivery" 30-8-331
"Investment company security" 30-8-113
"Issuer" 30-8-211
"Overissue" 30-8-220
"Protected purchaser" 30-8-333
"Securities account" 30-8-501

(3) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(4) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

History: En. Sec. 22, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.
Bank, 30-1-201.
Person, 30-1-201.
Send, 30-1-201.
Signed, 30-1-201.
Writing, 30-1-201.

30-8-113. Rules for determining whether certain obligations and interests are securities or financial assets. (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an

investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this chapter and not by chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in [30-9-115] 30-9-122, is not a security or a financial asset. *(Bracketed reference deleted July 1, 2001.)*

History: En. Sec. 23, Ch. 536, L. 1997; amd. Sec. 143, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 in (6) substituted "30-9-122" for "30-9-115". Amendment effective July 1, 2001.

Cross-References

DEFINITIONAL

Clearing corporation, 30-8-112.
Commodity contract, 30-9-115.
Financial asset, 30-8-112.
Security, 30-8-112.
Security certificate, 30-8-112.

30-8-114. Acquisition of security or financial asset or interest therein. (1) A person acquires a security or an interest therein, under this chapter, if:

(a) the person is a purchaser to whom a security is delivered pursuant to 30-8-331; or

(b) the person acquires a security entitlement to the security pursuant to 30-8-501.

(2) A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in part 5 of this chapter, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in 30-8-503.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2).

History: En. Sec. 24, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Delivery, 30-8-331.
Financial asset, 30-8-112.
Person, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Security entitlement, 30-8-112.

30-8-115. Notice of adverse claim. (1) A person has notice of an adverse claim if:

(a) the person knows of the adverse claim;

(b) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(c) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of

a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(a) 1 year after a date set for presentment or surrender for redemption or exchange; or

(b) 6 months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(a) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under chapter 9 is not notice of an adverse claim to a financial asset.

History: En. Sec. 25, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Adverse claim, 30-8-112.
Bearer form, 30-8-112.
Certificated security, 30-8-112.
Financial asset, 30-8-112.
Knowledge, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Registered form, 30-8-112.
Representative, 30-1-201.
Security certificate, 30-8-112.

30-8-116. *(Temporary)* **Control.** (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser and:

(a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) the uncertificated security is delivered to the purchaser; or

(b) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) the purchaser becomes the entitlement holder; or

(b) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) has control even if the registered owner in the case of subsection (3)(b) or the entitlement holder in the case of subsection (4)(b) retains the right to make

substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

30-8-116. *(Effective July 1, 2001)* **Control.** (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser and:

(a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) the uncertificated security is delivered to the purchaser; or

(b) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) the purchaser becomes the entitlement holder;

(b) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(c) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3) or (4) has control even if the registered owner in the case of subsection (3) or the entitlement holder in the case of subsection (4) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

History: En. Sec. 26, Ch. 536, L. 1997; amd. Sec. 144, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 inserted (4)(c) concerning security entitlement on behalf of purchaser; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

DEFINITIONAL

Bearer form, 30-8-112.
Certificated security, 30-8-112.
Delivery, 30-8-331.
Effective, 30-8-117.
Entitlement holder, 30-8-112.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Purchaser, 30-1-201, 30-8-126.
Registered form, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.
Uncertificated security, 30-8-112.

30-8-117. Whether indorsement, instruction, or entitlement order is effective. (1) "Appropriate person" means:

(a) with respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(b) with respect to an instruction, the registered owner of an uncertificated security;

(c) with respect to an entitlement order, the entitlement holder;

(d) if the person designated in subsection (1)(a), (1)(b), or (1)(c) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(e) if the person designated in subsection (1)(a), (1)(b), or (1)(c) lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if:

(a) it is made by the appropriate person;

(b) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under 30-8-116(3)(b) or (4)(b); or

(c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(b) the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

History: En. Sec. 27, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Entitlement order, 30-8-112.
Financial asset, 30-8-112.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Representative, 30-1-201.
Securities account, 30-8-501.
Security, 30-8-112.
Security certificate, 30-8-112.
Security entitlement, 30-8-112.
Uncertificated security, 30-8-112.

30-8-118. Warranties in direct holding. (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser that:

(a) the certificate is genuine and has not been materially altered;

(b) the transferor or indorser does not know of any fact that might impair the validity of the security;

(c) there is no adverse claim to the security;

(d) the transfer does not violate any restriction on transfer;

(e) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(f) the transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(a) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(b) the security is valid;

(c) there is no adverse claim to the security; and

(d) at the time the instruction is presented to the issuer:

(i) the purchaser will be entitled to the registration of transfer;

(ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) the transfer will not violate any restriction on transfer; and

(iv) the requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(a) the uncertificated security is valid;

(b) there is no adverse claim to the security;

(c) the transfer does not violate any restriction on transfer; and

(d) the transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer that:

(a) there is no adverse claim to the security; and

(b) the indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(a) the instruction is effective; and

(b) at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7).

(9) Except as otherwise provided in subsection (7), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1) through (6). A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (1) or (2) and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

History: En. Sec. 28, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Adverse claim, 30-8-112.
Broker, 30-8-112.
Certificated security, 30-8-112.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Person, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Secured party, 30-9-105.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.
Value, 30-1-201, 30-8-126.

30-8-119. Warranties in indirect holding. (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(a) the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(b) there is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in 30-8-118(1) or (2).

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in 30-8-118(1) or (2).

History: En. Sec. 29, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Adverse claim, 30-8-112.
Appropriate person, 30-8-117.
Entitlement holder, 30-8-112.
Entitlement order, 30-8-112.
Instruction, 30-8-112.
Person, 30-1-201.
Securities account, 30-8-501.
Securities intermediary, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

30-8-120. *(Temporary)* **Applicability — choice of law.** (1) The local law of the issuer's jurisdiction, as specified in subsection (4), governs:

(a) the validity of a security;

(b) the rights and duties of the issuer with respect to registration of transfer;

(c) the effectiveness of registration of transfer by the issuer;

(d) whether the issuer owes any duties to an adverse claimant to a security; and

(e) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5), governs:

(a) acquisition of a security entitlement from the securities intermediary;

(b) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(c) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsections (1)(b) through (1)(e).

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(b) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subsection (5)(a), but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subsection (5)(a) or (5)(b), the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(d) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subsection (5)(a) or (5)(b) and an account statement does not identify an office serving the entitlement holder's account as provided in subsection (5)(c), the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

30-8-120. *(Effective July 1, 2001)* **Applicability — choice of law.** (1) The local law of the issuer's jurisdiction, as specified in subsection (4), governs:

(a) the validity of a security;

(b) the rights and duties of the issuer with respect to registration of transfer;

(c) the effectiveness of registration of transfer by the issuer;

(d) whether the issuer owes any duties to an adverse claimant to a security; and

(e) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5), governs:

(a) acquisition of a security entitlement from the securities intermediary;

(b) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(c) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsections (1)(b) through (1)(e).

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the security intermediary's jurisdiction for the purposes of this part, this chapter, or chapters 1 through 9 of this title, that jurisdiction is the securities intermediary's jurisdiction.

(b) If subsection (5)(a) does not apply and an agreement between the securities intermediary and its entitlement holder expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If neither subsection (5)(a) nor (5)(b) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(d) If subsection (5)(a), (5)(b), or (5)(c) does not apply, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(e) If subsection (5)(a), (5)(b), (5)(c), or (5)(d) does not apply the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

History: En. Sec. 30, Ch. 536, L. 1997; amd. Sec. 145, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 substituted (5) concerning rules for determining security intermediaries jurisdiction for former text that read: "(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(b) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subsection (5)(a), but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subsection (5)(a) or (5)(b), the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(d) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subsection (5)(a) or (5)(b) and an account statement does not identify an office serving the entitlement holder's account as provided in subsection (5)(c), the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

DEFINITIONAL

Adverse claim, 30-8-112.
Agreement, 30-1-201.
Certificated security, 30-8-112.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Person, 30-1-201.
Purchase, 30-1-201.
Securities intermediary, 30-8-112.
Security, 30-8-112.
Security certificate, 30-8-112.
Security entitlement, 30-8-112.
Uncertificated security, 30-8-112.

30-8-121. Clearing corporation rules. A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this chapter and affects another party who does not consent to the rule.

History: En. Sec. 31, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Clearing corporation, 30-8-112.

30-8-122. Creditor's legal process. (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (4). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (4).

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (4).

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

History: En. Sec. 32, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Issuer, 30-8-211.
Secured party, 30-9-105.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

Uncertificated security, 30-8-112.

30-8-123. Statute of frauds inapplicable. A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within 1 year of its making.

History: En. Sec. 33, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Action, 30-1-201.
Contract, 30-1-201.
Writing, 30-1-201.

30-8-124. Evidentiary rules concerning certificated securities. The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

History: En. Sec. 34, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Action, 30-1-201.
Burden of establishing, 30-1-201.
Indorsement, 30-8-112.
Issuer, 30-8-211.
Presumed, 30-1-201.
Security, 30-8-112.
Security certificate, 30-8-112.

30-8-125. Securities intermediary and others not liable to adverse claimant. A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process;

(2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

History: En. Sec. 35, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Broker, 30-8-112.
Effective, 30-8-117.
Entitlement order, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security certificate, 30-8-112.

30-8-126. Securities intermediary as purchaser for value. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

History: En. Sec. 36, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Entitlement order, 30-8-112.

Securities intermediary, 30-8-112.

Security entitlement, 30-8-112.

Part 2

Issue and Issuer

30-8-201 through 30-8-208. Repealed. Sec. 88, Ch. 536, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

30-8-201. En. Sec. 8-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-201; amd. Sec. 17, Ch. 402, L. 1983.

30-8-202. En. Sec. 8-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-202; amd. Sec. 18, Ch. 402, L. 1983; amd. Sec. 1, Ch. 80, L. 1985.

30-8-203. En. Sec. 8-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-203; amd. Sec. 19, Ch. 402, L. 1983.

30-8-204. En. Sec. 8-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-204; amd. Sec. 20, Ch. 402, L. 1983.

30-8-205. En. Sec. 8-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-205; amd. Sec. 21, Ch. 402, L. 1983; amd. Sec. 2, Ch. 80, L. 1985.

30-8-206. En. Sec. 8-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-206; amd. Sec. 22, Ch. 402, L. 1983.

30-8-207. En. Sec. 8-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-207; amd. Sec. 23, Ch. 402, L. 1983; amd. Sec. 3, Ch. 80, L. 1985.

30-8-208. En. Sec. 8-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-208; amd. Sec. 24, Ch. 402, L. 1983.

30-8-209 and 30-8-210 reserved.

30-8-211. Issuer. (1) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(a) places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(b) creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(c) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(d) becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

History: En. Sec. 37, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Person, 30-1-201.

Security, 30-8-112.

Security certificate, 30-8-112.

Uncertificated security, 30-8-112.

30-8-212. Issuer's responsibility and defenses — notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subsection (2)(a) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in 30-8-215, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

History: En. Sec. 38, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Notice, 30-1-201.
Security, 30-8-112.
Uncertificated security, 30-8-112.
Value, 30-1-201, 30-8-126.

30-8-213. Staleness as notice of defect or defense. After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) is not covered by subsection (1) and the purchaser takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

History: En. Sec. 39, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Notice, 30-1-201.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

30-8-214. Effect of issuer's restriction on transfer. A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) the security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) the security is uncertificated and the registered owner has been notified of the restriction.

History: En. Sec. 40, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Conspicuous, 30-1-201.
Issuer, 30-8-211.
Knowledge, 30-1-201.
Notify, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

30-8-215. Effect of unauthorized signature on security certificate. An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of any of the persons listed in subsection (1), entrusted with responsible handling of the security certificate.

History: En. Sec. 41, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Issuer, 30-8-211.
Notice, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Security certificate, 30-8-112.
Unauthorized signature, 30-1-201.

30-8-216. Completion of alteration of security certificate. (1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

History: En. Sec. 42, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Notice, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Unauthorized signature, 30-1-201.
Value, 30-1-201, 30-8-126.

30-8-217. Rights and duties of issuer with respect to registered owners. (1) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(2) This chapter does not affect the liability of the registered owner of a security for a call, assessment, or the like.

History: En. Sec. 43, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Registered form, 30-8-112.
Security, 30-8-112.
Uncertificated security, 30-8-112.

30-8-218. Effect of signature of authenticating trustee, registrar, or transfer agent. (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(a) the certificate is genuine;

(b) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(c) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing under subsection (1) does not assume responsibility for the validity of the security in other respects.

History: En. Sec. 44, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Genuine, 30-1-201.
Issuer, 30-8-211.
Notice, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.
Value, 30-1-201, 30-8-126.

30-8-219. Issuer's lien. A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

History: En. Sec. 45, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Issuer, 30-8-211.
Purchaser, 30-1-201, 30-8-126.
Security, 30-8-112.
Security certificate, 30-8-112.

30-8-220. Overissue. (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4), the provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

History: En. Sec. 46, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Issuer, 30-8-211.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

Part 3

Transfer of Certificated and Uncertificated Securities

30-8-301 through 30-8-321. Repealed. Sec. 88, Ch. 536, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

30-8-301. En. Sec. 8-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-301; amd. Sec. 25, Ch. 402, L. 1983.

30-8-302. En. Sec. 8-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-302; amd. Sec. 26, Ch. 402, L. 1983.

30-8-303. En. Sec. 8-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-303; amd. Sec. 27, Ch. 402, L. 1983.

30-8-304. En. Sec. 8-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-304; amd. Sec. 28, Ch. 402, L. 1983.

30-8-305. En. Sec. 8-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-305; amd. Sec. 29, Ch. 402, L. 1983.

30-8-306. En. Sec. 8-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-306; amd. Sec. 30, Ch. 402, L. 1983.

30-8-307. En. Sec. 8-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-307; amd. Sec. 31, Ch. 402, L. 1983.

30-8-308. En. Sec. 8-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-308; amd. Sec. 32, Ch. 402, L. 1983.

30-8-309. En. Sec. 8-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-309; amd. Sec. 33, Ch. 402, L. 1983; amd. Sec. 4, Ch. 80, L. 1985.

30-8-310. En. Sec. 8-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-310; amd. Sec. 34, Ch. 402, L. 1983.

30-8-311. En. Sec. 8-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-311; amd. Sec. 35, Ch. 402, L. 1983.

30-8-312. En. Sec. 8-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-312; amd. Sec. 36, Ch. 402, L. 1983.

30-8-313. En. Sec. 8-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-313; amd. Sec. 37, Ch. 402, L. 1983; amd. Sec. 5, Ch. 80, L. 1985.

30-8-314. En. Sec. 8-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-314; amd. Sec. 38, Ch. 402, L. 1983.

30-8-315. En. Sec. 8-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-315; amd. Sec. 39, Ch. 402, L. 1983.

30-8-316. En. Sec. 8-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-316; amd. Sec. 40, Ch. 402, L. 1983.

30-8-317. En. Sec. 8-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-317; amd. Sec. 41, Ch. 402, L. 1983.

30-8-318. En. Sec. 8-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-318; amd. Sec. 42, Ch. 402, L. 1983.

30-8-319. En. Sec. 8-319, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-319; amd. Sec. 43, Ch. 402, L. 1983; amd. Sec. 6, Ch. 80, L. 1985.

30-8-320. En. Sec. 8-320, Ch. 264, L. 1963; amd. Sec. 2, Ch. 278, L. 1977; R.C.M. 1947, 87A-8-320; amd. Sec. 44, Ch. 402, L. 1983.

30-8-321. En. Sec. 45, Ch. 402, L. 1983.

30-8-322 through 30-8-330 reserved.

30-8-331. *(Temporary)* **Delivery.** (1) Delivery of a certificated security to a purchaser occurs when:

(a) the purchaser acquires possession of the security certificate;

(b) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

30-8-331. *(Effective July 1, 2001)* **Delivery.** (1) Delivery of a certificated security to a purchaser occurs when:

(a) the purchaser acquires possession of the security certificate;

(b) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is:

(i) registered in the name of the purchaser;

(ii) payable to the order of the purchaser; or

(iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

History: En. Sec. 47, Ch. 536, L. 1997; amd. Sec. 146, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 inserted (1)(c)(i) concerning registration in name of purchaser; inserted (1)(c)(ii) concerning payability to order of purchaser; in (1)(c)(iii) at end inserted "and has not been indorsed to the securities intermediary or in blank"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Effective, 30-8-117.
Issuer, 30-8-211.
Purchaser, 30-1-201, 30-8-126.
Registered form, 30-8-112.
Security certificate, 30-8-112.
Special endorsement, 30-8-334.
Uncertificated security, 30-8-112.

30-8-332. *(Temporary)* **Rights of purchaser.** (1) Except as otherwise provided in subsections (2) and (3), upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

30-8-332. *(Effective July 1, 2001)* **Rights of purchaser.** (1) Except as otherwise provided in subsections (2) and (3), a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

History: En. Sec. 48, Ch. 536, L. 1997; amd. Sec. 147, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 in (1) after "(3)" substituted "a purchaser of a certificated or uncertificated security" for "upon delivery of a certificated or uncertificated security to a purchaser, the purchaser". Amendment effective July 1, 2001.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Delivery, 30-8-331.
Notice of adverse claim, 30-8-115.
Protected purchaser, 30-8-333.
Purchase, 30-1-201, 30-8-126.

Uncertificated security, 30-8-112.

30-8-333. Protected purchaser. (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(a) gives value;

(b) does not have notice of any adverse claim to the security; and

(c) obtains control of the certificated or uncertificated security.

(2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

History: En. Sec. 49, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Adverse claim, 30-8-112.
Certificated security, 30-8-112.
Control, 30-8-116.
Notice of adverse claim, 30-8-115.
Purchaser, 30-1-201, 30-8-126.
Uncertificated security, 30-8-112.
Value, 30-1-201, 30-8-126.

30-8-334. Indorsement. (1) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in 30-8-118 and not an obligation that the security will be honored by the issuer.

History: En. Sec. 50, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Bearer form, 30-8-112.
Certificated security, 30-8-112.
Indorsement, 30-8-112.
Purchaser, 30-1-201, 30-8-126.
Registered form, 30-8-112.
Security certificate, 30-8-112.

30-8-335. Instruction. (1) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by 30-8-118 and not an obligation that the security will be honored by the issuer.

History: En. Sec. 51, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Appropriate person, 30-8-117.
Instruction, 30-8-112.
Issuer, 30-8-211.

30-8-336. Effect of guaranteeing signature, indorsement, or instruction. (1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(c) the signer had legal capacity to sign.

(2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(c) the signer had legal capacity to sign.

(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) and also warrants that at the time the instruction is presented to the issuer:

(a) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(b) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) or a special guarantor under subsection (3) does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) and also warrants the rightfulness of the transfer in all respects.

(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

History: **En. Sec. 52, Ch. 536, L. 1997.**

Cross-References

DEFINITIONAL

Appropriate person, 30-8-117.
Genuine, 30-1-201.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

30-8-337. Purchaser's right to requisites for registration of transfer. Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

History: En. Sec. 53, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Purchaser, 30-1-201, 30-8-126.

Security, 30-8-112.

Value, 30-1-201, 30-8-126.

Part 4
Registration

Part Cross-References

Registration, Title 30, ch. 10, part 2.

30-8-401 through 30-8-408. Repealed. Sec. 88, Ch. 536, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

30-8-401. En. Sec. 8-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-401; amd. Sec. 46, Ch. 402, L. 1983.

30-8-402. En. Sec. 8-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-402; amd. Sec. 47, Ch. 402, L. 1983.

30-8-403. En. Sec. 8-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-403; amd. Sec. 48, Ch. 402, L. 1983.

30-8-404. En. Sec. 8-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-404; amd. Sec. 49, Ch. 402, L. 1983.

30-8-405. En. Sec. 8-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-405; amd. Sec. 50, Ch. 402, L. 1983; amd. Sec. 7, Ch. 80, L. 1985.

30-8-406. En. Sec. 8-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-406; amd. Sec. 51, Ch. 402, L. 1983.

30-8-407. En. Sec. 52, Ch. 402, L. 1983.

30-8-408. En. Sec. 53, Ch. 402, L. 1983.

30-8-409 and 30-8-410 reserved.

30-8-411. Duty of issuer to register transfer. (1) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(a) under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(b) the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(c) reasonable assurance is given that the indorsement or instruction is genuine and authorized (30-8-412);

(d) any applicable law relating to the collection of taxes has been complied with;

(e) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with 30-8-214;

(f) a demand that the issuer not register transfer has not become effective under 30-8-413, or the issuer has complied with 30-8-413(2) but no legal process or indemnity bond is obtained as provided in 30-8-413(4); and

(g) the transfer is in fact rightful or is to a protected purchaser.

(2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

History: En. Sec. 54, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Appropriate person, 30-8-117.

Certificated security, 30-8-112.

Genuine, 30-1-201.

Indorsement, 30-8-112.

Instruction, 30-8-112.

Issuer, 30-8-211.

Protective purchaser, 30-8-333.

Registered form, 30-8-112.

Uncertificated security, 30-8-112.

30-8-412. Assurance that indorsement or instruction is effective. (1) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(a) in all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(b) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(c) if the indorsement is made or the instruction is originated by a fiduciary pursuant to 30-8-117(1)(d) or (1)(e), appropriate evidence of appointment or incumbency;

(d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) if the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(2) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) In this section:

(a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(b) "Appropriate evidence of appointment or incumbency" means:

(i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(ii) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

History: **En. Sec. 55, Ch. 536, L. 1997.**

Cross-References

DEFINITIONAL

Appropriate person, 30-8-117.
Genuine, 30-1-201.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.

30-8-413. Demand that issuer not register transfer. (1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to:

(a) the person who initiated the demand at the address provided in the demand; and

(b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(i) the certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;

(ii) a demand that the issuer not register transfer had previously been received; and

(iii) the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in subsection (2)(b)(iii) may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(a) obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(b) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

History: **En. Sec. 56, Ch. 536, L. 1997.**

Cross-References

DEFINITIONAL

Appropriate person, 30-8-117.
Certificated security, 30-8-112.
Communicate, 30-8-112.
Effective, 30-8-117.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Registered form, 30-8-112.
Uncertificated security, 30-8-112.

30-8-414. Wrongful registration. (1) Except as otherwise provided in 30-8-416, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(a) pursuant to an ineffective indorsement or instruction;

(b) after a demand that the issuer not register transfer became effective under 30-8-413(1) and the issuer did not comply with 30-8-413(2);

(c) after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(d) by an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by 30-8-220.

(3) Except as otherwise provided in subsection (1) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

History: **En. Sec. 57, Ch. 536, L. 1997.**

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Effective, 30-8-117.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Security, 30-8-112.
Uncertificated security, 30-8-112.

30-8-415. Replacement of lost, destroyed, or wrongfully taken security certificate. (1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(a) so requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by 30-8-220. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

History: En. Sec. 58, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Bearer form, 30-8-112.
Certificated security, 30-8-112.
Issuer, 30-8-211.
Notice, 30-1-201.
Overissue, 30-8-220.
Protected purchaser, 30-8-333.
Registered form,, 30-8-112.
Security certificate, 30-8-112.

30-8-416. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate. If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under 30-8-414 or a claim to a new security certificate under 30-8-415.

History: En. Sec. 59, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Issuer, 30-8-211.
Notify, 30-1-201.
Security certificate, 30-8-112.

30-8-417. Authenticating trustee, transfer agent, and registrar. A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

History: En. Sec. 60, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Certificated security, 30-8-112.
Issuer, 30-8-211.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

Part 5

Security Entitlements

30-8-501. Securities account — acquisition of security entitlement from securities intermediary. (1) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5), a person acquires a security entitlement if a securities intermediary:

(a) indicates by book entry that a financial asset has been credited to the person's securities account;

(b) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(c) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(3) If a condition of subsection (2) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement.

History: En. Sec. 61, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Financial asset, 30-8-112.
Indorsement, 30-8-112.
Securities intermediary, 30-8-112.
Security, 30-8-112.
Security entitlement, 30-8-112.

30-8-502. Assertion of adverse claim against entitlement holder. An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under 30-8-501 for value and without notice of the adverse claim.

History: En. Sec. 62, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Adverse claim, 30-8-112.
Financial asset, 30-8-112.
Notice of adverse claim, 30-8-115.
Security entitlement, 30-8-112.
Value, 30-1-201, 30-8-126.

30-8-503. Property interest of entitlement holder in financial asset held by securities intermediary. (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in 30-8-511.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the

time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under 30-8-505 through 30-8-508.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against a purchaser of the financial asset or interest therein only if:

(a) insolvency proceedings have been initiated by or against the securities intermediary;

(b) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(c) the securities intermediary violated its obligations under 30-8-504 by transferring the financial asset or interest therein to the purchaser; and

(d) the purchaser is not protected under subsection (6).

(5) The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(6) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under 30-8-504.

History: En. Sec. 63, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Control, 30-8-116.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Insolvency proceedings, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.
Value, 30-1-201, 30-8-126.

30-8-504. Duty of securities intermediary to maintain financial asset. (1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1).

(3) A securities intermediary satisfies the duty in subsection (1) if:

(a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

History: En. Sec. 64, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.
Clearing corporation, 30-8-112.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

30-8-505. Duty of securities intermediary with respect to payments and distributions. (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

History: En. Sec. 65, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

30-8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

History: En. Sec. 66, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

30-8-507. Duty of securities intermediary to comply with entitlement order. (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful

transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

History: En. Sec. 67, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.
Appropriate person, 30-8-117.
Effective, 30-8-117.
Entitlement holder, 30-8-112.
Entitlement order, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

30-8-508. Duty of securities intermediary to change entitlement holder's position to other form of security holding. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

History: En. Sec. 68, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

30-8-509. Specification of duties of securities intermediary by other statute or regulation — manner of performance of duties of securities intermediary and exercise of rights of entitlement holder. (1) If the substance of a duty imposed upon a securities intermediary by 30-8-504 through 30-8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by 30-8-504 through 30-8-508 is subject to:

(a) rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(b) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) Sections 30-8-504 through 30-8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

History: En. Sec. 69, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.
Entitlement holder, 30-8-112.
Securities intermediary, 30-8-112.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-8-510. *(Temporary)* **Rights of purchaser of security entitlement from entitlement holder.** (1) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under 30-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in chapter 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

30-8-510. *(Effective July 1, 2001)* **Rights of purchaser of security entitlement from entitlement holder.** (1) In an action not covered by the priority rules in chapter 9 or the rules stated in subsection (3), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under 30-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in chapter 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (4), purchasers who have control rank according to the priority in time of:

(a) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained if the purchaser obtained control under 30-8-116(4)(a);

(b) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried if the purchaser obtained control under 30-8-116(4)(b); or

(c) if the purchaser obtained control through another person under 30-8-116(4)(c), the time on which priority would be based under this subsection (3) if the other person were the secured party.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

History: En. Sec. 70, Ch. 536, L. 1997; amd. Sec. 148, Ch. 305, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 305 at beginning inserted "In an action not covered by the priority rules in chapter 9 or the rules stated in subsection (3)"; in (3) at beginning of second sentence inserted exception clause and after "rank" substituted "according to the priority in time of" for "equally, except that"; inserted (3)(a) through (3)(c) outlining priority determination; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

DEFINITIONAL

Adverse claim, 30-8-112.

Control, 30-8-116.
Entitlement holder, 30-8-112.
Notice of adverse claim, 30-8-115.
Purchase, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.
Value, 30-1-201, 30-8-126.

30-8-511. Priority among security interests and entitlement holders. (1) Except as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

History: En. Sec. 71, Ch. 536, L. 1997.

Cross-References

DEFINITIONAL

Clearing corporation, 30-8-112.
Control, 30-8-116.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.
Security interest, 30-1-201.
Value, 30-1-201, 30-8-126.

CHAPTER 9

UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS

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30-9-612. Timeliness of notification before disposition of collateral.
30-9-613. Contents and form of notification before disposition of collateral — general.
30-9-614. Contents and form of notification before disposition of collateral — consumer-goods transaction.
30-9-615. Application of proceeds of disposition — liability for deficiency and right to surplus.
30-9-616. Explanation of calculation of surplus or deficiency.
30-9-617. Rights of transferee of collateral.
30-9-618. Rights and duties of certain secondary obligors.
30-9-619. Transfer of record or legal title.
30-9-620. Acceptance of collateral in full or partial satisfaction — compulsory disposition of collateral.
30-9-621. Notification of proposal to accept collateral.
30-9-622. Effect of acceptance of collateral.
30-9-623. Right to redeem collateral.
30-9-624. Waiver.
30-9-625. Remedies for secured party's failure to comply with chapter.
30-9-626. Action in which deficiency or surplus is in issue.
30-9-627. Determination of whether conduct was commercially reasonable.
30-9-628. Nonliability and limitation on liability of secured party — liability of secondary obligor.

Chapter Compiler's Comments

Transition Provisions: Sections 162 through 167, Ch. 305, L. 1999, provided:

"Section 162. Security interest perfected before effective date. (1) If a security interest is enforceable and has priority over the rights of a lien creditor immediately before [this act] takes effect and the applicable requirements for enforceability and perfection under [this act] are satisfied without further action when [this act] takes effect, the security interest is a perfected security interest under [this act].

(2) Except as otherwise provided in [section 166] [not codified], if a security interest is a perfected security interest under [former chapter 9] immediately before [this act] takes effect but the applicable requirements for enforceability or perfection under [this act] are not satisfied when [this act] takes effect, the security interest:

(a) is a perfected security interest for 1 year after [this act] takes effect;

(b) remains enforceable thereafter only if the security interest becomes enforceable under [section 12] [30-9-213] before the year expires; and

(c) remains perfected thereafter only if the applicable requirements for perfection under [this act] are satisfied before the year expires.

Section 163. Security interest unperfected before effective date. A security interest that is enforceable immediately before [this act] takes effect but that is subordinate to the rights of a person that becomes a lien creditor at that time:

(1) remains an enforceable security interest for 1 year after [this act] takes effect;

(2) remains enforceable thereafter if the security interest becomes enforceable under [section 12] [30-9-213] when [this act] takes effect or within 1 year thereafter; and

(3) becomes perfected:

(a) without further action, when [this act] takes effect if the applicable requirements for perfection under [this act] are satisfied before or at that time; or

(b) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Section 164. Effectiveness of action taken before effective date of act. (1) If action other than the filing of a financing statement is taken before [this act] takes effect and the action would have resulted in priority of a security interest over the rights of a lien creditor had the security interest become enforceable before [this act] takes effect, the action is sufficient to perfect a security interest that attaches under [this act] within 1 year after [this act] takes effect. An attached security interest becomes unperfected 1 year after [this act] takes effect unless the security interest becomes a perfected security interest under [this act] before the expiration of that period.

(2) The filing of a financing statement before [this act] takes effect is sufficient to perfect a security interest that attaches after [this act] takes effect to the extent the filing would satisfy the applicable requirements for perfection under [this act].

(3) [This act] does not render ineffective an effective financing statement that is filed before [this act] takes effect in accordance with the law of the jurisdiction governing perfection as provided in [former 30-9-103]. However, except as otherwise provided in subsection (4):

(a) the financing statement ceases to be effective at the earlier of:

(i) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(ii) 5 years after [this act] takes effect; and

(b) a continuation statement filed after [this act] takes effect does not continue the effectiveness of the financing statement.

(4) A continuation statement filed after [this act] takes effect and in accordance with the law of the jurisdiction governing perfection as provided in [sections 20 through 61] [Title 30, chapter 9, part 3] is effective to continue the effectiveness of a financing statement filed in that jurisdiction before [this act] takes effect.

(5) [This act] does not render ineffective an effective financing statement that was filed before [this act] takes effect and in the office specified in [former 30-9-401]. However, except as otherwise provided in subsection (6):

(a) the financing statement ceases to be effective at the earlier of:

(i) the time the financing statement would have ceased to be effective under [former chapter 9]; or

(ii) 5 years after [this act] takes effect; and

(b) a continuation statement filed after [this act] takes effect does not continue the effectiveness of the financing statement.

(6) A continuation statement filed after [this act] takes effect and in the office specified in [section 71] [30-9-521] is effective to continue the effectiveness of a financing statement filed in that office before [this act] takes effect.

(7) A financing statement that includes a financing statement filed before [this act] takes effect and a continuation statement filed after [this act] takes effect is effective only to the extent that it satisfies the requirements of [sections 71 through 97] [Title 30, chapter 9, part 5] for an initial financing statement.

Section 165. When initial financing statement suffices as continuation statement. (1) The effectiveness of a financing statement filed before [this act] takes effect may be continued by filing in the office specified in [section 71] [30-9-521] an initial financing statement complying with the requirements of subsection (2) if:

(a) the filing of a financing statement in that office is effective to perfect a security interest; and

(b) the preeffective-date financing statement was filed in an office in another state or another office in this state.

(2) To be effective for purposes of subsection (1), an initial financing statement must:

(a) satisfy the requirements of [sections 71 through 97] [Title 30, chapter 9, part 5] for an initial financing statement;

(b) identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(c) indicate that the preeffective-date financing statement remains effective.

Section 166. Persons entitled to file initial financing statement or continuation of statement. A person may file an initial financing statement or a continuation statement under [sections 164 through 169] [not codified] if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under [sections 164 through 169] [not codified]:

(a) to continue the effectiveness of a financing statement filed before [this act] takes effect; or

(b) to perfect or continue the perfection of a security interest.

Section 167. Priority. (1) [Former chapter 9] determines the priority of conflicting claims to collateral if the relative priorities of the parties were fixed before [this act] takes effect. In other cases, [this act] determines priority.

(2) For purposes of [section 41(1)] [30-9-342(1)], the priority of a security interest that becomes a perfected security interest under [section 165] [not codified] dates from the time the applicable requirements for perfection are satisfied. This subsection does not apply to conflicting security interests each of which becomes a perfected security interest under [section 165] [not codified]."

Chapter Cross-References

Sales, Title 30, ch. 2.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Credit transactions, Title 31, ch. 1.

Debtor and creditor relationships, Title 31, ch. 2.

Related credit practices, Title 31, ch. 3.

Defrauding secured creditors — crime — penalty, 45-6-315.

Financing sales of motor vehicles, Title 61, ch. 4, part 4.

Mortgages, Pledges, and Liens, Title 71.

Trust Code, Title 72, ch. 33 through 36.

Part 1

General Provisions

30-9-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

History: En. Sec. 9-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-101.

30-9-102. *(Temporary)* **Policy and subject matter of chapter.** (1) Except as otherwise provided in 30-9-104 on excluded transactions, this chapter applies:

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures, including goods, documents, instruments, general intangibles, chattel paper, or accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This chapter applies to security interests created by contract, including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in 30-9-310.

(3) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-102; amd. Sec. 54, Ch. 402, L. 1983.

Cross-References

GENERAL

Territorial application of Code — parties' power to choose applicable law, 30-1-105.

Sale on approval and sale or return — consignment sales and rights of creditors, 30-2-326.

Applicability of U.C.C. to mortgages, 71-1-112.

DEFINITIONAL

Account, 30-9-106.

Chattel paper, 30-9-105.

Contract, 30-1-201.

Document, 30-9-105.

General intangibles, 30-9-106.

Goods, 30-9-105.

Instrument, 30-9-105.

Security interest, 30-1-201.

30-9-103. *(Temporary)* **Perfection of security interests in multiple state transactions.** (1) (a) Subsection (1) applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection

(2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in subsection (1), perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this chapter to perfect the security interest:

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of 4 months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter considered to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in (1)(d)(i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (30-9-307(2)), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in (1)(d)(i) and (ii).

(2) (a) Subsection (2) applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in subsection (2), perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in (2)(d), a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in (1)(d).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) (a) Subsection (3) applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated

securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery, and commercial harvesting machinery, and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in subsection (3)(c), "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be considered located at the debtor's place of business if the debtor has one, at the chief executive office if the debtor has more than one place of business, otherwise at the debtor's residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act, it shall be considered located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is considered to have been unperfected as against a person who became a purchaser after the change.

(4) The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) (a) This subsection (6) applies to investment property.

(b) Except as otherwise provided in subsection (6)(f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in 30-8-120(4).

(d) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in 30-8-120(5).

(e) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this subsection (6)(e):

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subsection (6)(e)(i), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subsections (6)(e)(i) or (6)(e)(ii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subsections (6)(e)(i) or (6)(e)(ii) and an account statement does not identify an office serving the commodity customer's account as provided in subsection (6)(e)(iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-103; amd. Sec. 55, Ch. 402, L. 1983; amd. Sec. 72, Ch. 536, L. 1997.

Cross-References

GENERAL

Territorial application of Code — parties' power to choose applicable law, 30-1-105.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

Priorities among conflicting security interests in same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

Applicable laws (mortgages — general provisions), 71-1-112.

DEFINITIONAL

Accounts, 30-9-106.

Chattel paper, 30-9-105.

Collateral, 30-9-105.

Consumer goods, 30-9-109.

Debtor, 30-9-105.

Document, 30-9-105.

Equipment, 30-9-109.

General intangibles, 30-9-106.

Goods, 30-9-105.

Inventory, 30-9-109.

Purchase money security interest, 30-9-107.

Purchaser, 30-1-201.

Security interest, 30-1-201.

30-9-104. *(Temporary)* **Transactions excluded from chapter.** This chapter does not apply:

(1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that the statute governs the rights of parties to and third parties affected by transactions in particular types of property;

(2) to a landlord's lien;

(3) to a lien given by statute or other rule of law for services or materials except as provided in 30-9-310 on priority of such liens;

(4) to a transfer of a claim for wages, salary, or other compensation of an employee;

(5) to a transfer by a government or governmental subdivision or agency;

(6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract, or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness;

(7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

(8) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral);

(9) to any right of setoff;

(10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents under the lease;

(11) to a transfer in whole or in part of any claim arising out of tort;

(12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

(13) to liquor in an agency liquor store as defined in 16-1-106; or

(14) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-104; amd. Sec. 56, Ch. 402, L. 1983; amd. Sec. 40, Ch. 530, L. 1995; amd. Sec. 73, Ch. 536, L. 1997.

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

DEFINITIONAL

Account, 30-9-106.
Chattel paper, 30-9-105.
Contract, 30-1-201.
Party, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

30-9-105. *(Temporary)* **Definitions and index of definitions.** (1) In this chapter, the following definitions apply unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible.

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. When the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

(e) "Deposit account" means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.

(f) "Document" means document of title as defined in the general definitions of chapter 1 (30-1-201) and a receipt of the kind described in 30-7-201(2).

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (30-9-313), but does not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber that is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(i) "Instrument" means a negotiable instrument (defined in 30-3-104) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment. The term does not include investment property.

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(k) An advance is made "pursuant to commitment" if the secured party has bound the secured party to make it, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the secured party's obligation.

(l) "Security agreement" means an agreement which creates or provides for a security interest.

(m) "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or trolley bus business; the electric or electronics communications transmission business; the transmission of goods by pipeline; or the transmission or the production and transmission of electricity, steam, gas, or water or the provision of sewer service.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account". 30-9-106.
"Attach". 30-9-203.
"Commodity contract". 30-9-115.
"Commodity customer". 30-9-115.
"Commodity intermediary". 30-9-115.
"Construction mortgage". 30-9-313(1).
"Consumer goods". 30-9-109(1).
"Control". 30-9-115.

"Equipment". 30-9-109(2).
"Farm products". 30-9-109(3).
"Fixture". 30-9-313(1).
"Fixture filing". 30-9-313.
"General intangibles". 30-9-106.
"Inventory". 30-9-109(4).
"Investment property". 30-9-115.
"Lien creditor". 30-9-301(3).
"Proceeds". 30-9-306(1).
"Purchase money security interest". 30-9-107.
"United States". 30-9-103.

(3) The following definitions in other chapters apply to this chapter:

"Broker". 30-8-112.
"Certificated security". 30-8-112.
"Check". 30-3-104.
"Clearing corporation". 30-8-112.
"Contract for sale". 30-2-106.
"Control". 30-8-116.
"Delivery". 30-8-331.
"Entitlement holder". 30-8-112.
"Financial asset". 30-8-112.
"Holder in due course". 30-3-302.
"Letter of credit". 30-5-122.
"Note". 30-3-104.
"Proceeds of a letter of credit". 30-5-134(1).
"Sale". 30-2-106.
"Securities intermediary". 30-8-112.
"Security". 30-8-112.
"Security certificate". 30-8-112.
"Security entitlement". 30-8-112.
"Uncertificated security". 30-8-112.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-105; amd. Sec. 3, Ch. 137, L. 1979; amd. Sec. 57, Ch. 402, L. 1983; amd. Sec. 74, Ch. 536, L. 1997.

Cross-References

GENERAL

Terms relating to property and decedent's estates, 1-1-205.

Goods to be severed from realty — recording, 30-2-107.

Transactions excluded from chapter, 30-9-104.

Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory", 30-9-109.

When collateral not owned by debtor, 30-9-112.

When security interest perfected — continuity of perfection, 30-9-303.

Purchase of chattel paper and instruments, 30-9-308.

DEFINITIONAL

Account, 30-9-106.
Agreement, 30-1-201.
Document of title, 30-1-201.
General intangibles, 30-9-106.
Holder, 30-1-201.
Money, 30-1-201.
Negotiable instrument, 30-3-104.
Person, 30-1-201.
Representative, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.
Writing, 30-1-201.

30-9-106. *(Temporary)* **Definitions — "account" — "general intangibles".** "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-106; amd. Sec. 58, Ch. 402, L. 1983; amd. Sec. 75, Ch. 536, L. 1997.

Cross-References

GENERAL

Perfection of security interests in multiple state jurisdictions, 30-9-103.

Transactions excluded from chapter, 30-9-104.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment, 30-9-318.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

DEFINITIONAL

Chattel paper, 30-9-105.
Contract, 30-1-201.
Document, 30-9-105.
Goods, 30-9-105.
Instrument, 30-9-105.

30-9-107. *(Temporary)* **Definitions — "purchase money security interest".** A security interest is a "purchase money security interest" to the extent that it is:

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-107.

Cross-References

GENERAL

When after-acquired collateral not security for antecedent debt, 30-9-108.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

Priorities among conflicting security interests in same collateral, 30-9-312.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Person, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-108. *(Temporary)* **When after-acquired collateral not security for antecedent debt.** Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-108.

Cross-References

GENERAL

Definitions — purchase money security interest, 30-9-107.

After-acquired property — future advances, 30-9-204.

Priorities among conflicting security interests in same collateral, 30-9-312.

Lien on future interest, 71-3-105.

DEFINITIONAL

Collateral, 30-9-105.
Contract, 30-1-201.
Debtor, 30-9-105.
Purchase, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-109. *(Temporary)* **Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory".** Goods are:

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, milk and eggs), including crops growing or to be grown, and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-109; amd. Sec. 1, Ch. 326, L. 1989.

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Contract, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Organization, 30-1-201.
Person, 30-1-201.
Sale, 30-2-106.

30-9-110. *(Temporary)* **Sufficiency of description.** For the purposes of this chapter any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-110.

Cross-References

Attachment and enforceability of security interest — proceeds — formal requisites, 30-9-203.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

30-9-111. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 9-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-111.

30-9-112. *(Temporary)* **Where collateral is not owned by debtor.** Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under 30-9-502(2) or under 30-9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor:

(a) to receive statements under 30-9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under 30-9-505;

(c) to redeem the collateral under 30-9-506;

(d) to obtain injunctive or other relief under 30-9-507(1); and

(e) to recover losses caused to him under 30-9-208(2). *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-112.

Cross-References

GENERAL

Default, Title 30, ch. 9, part 5.

Certain contracts void, 71-3-109.

Right to redeem, 71-3-117.

DEFINITIONAL

Collateral, 30-9-105.

Debtor, 30-9-105.

Notice, 30-1-201.

Person, 30-1-201.

Receive notice, 30-1-201.

Right, 30-1-201.

Secured party, 30-9-105.

30-9-113. *(Temporary)* **Security interests arising under chapter on sales or under chapter on leases.** A security interest arising solely under the chapter on sales (chapter 2) or the chapter on leases (chapter 2A) is subject to the provisions of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

(1) no security agreement is necessary to make the security interest enforceable;

(2) no filing is required to perfect the security interest; and

(3) the rights of the secured party on default by the debtor are governed:

(a) by the chapter on sales (chapter 2) in the case of a security interest arising solely under that chapter; or

(b) by the chapter on leases (chapter 2A) in the case of a security interest arising solely under that chapter. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-113; amd. Sec. 228, Ch. 410, L. 1991.

Cross-References

GENERAL

Passing of title — reservation for security — limited application of section, 30-2-401.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Seller's shipment under reservation, 30-2-505.

Rights of financing agency, 30-2-506.

Seller's stoppage of delivery in transit or otherwise, 30-2-705.

Seller's resale including contract for resale, 30-2-706.

Person in position of seller, 30-2-707.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Policy and subject matter of chapter, 30-9-102.

Attachment and enforceability of security interest — proceeds — formal requisites, 30-9-203.

After-acquired property — future advances, 30-9-204.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Debtor, 30-9-105.

Goods, 30-9-105.

Rights, 30-1-201.

Secured party, 30-9-105.

Security agreement, 30-9-105.

Security interest, 30-1-201.

30-9-114. *(Temporary)* **Consignment.** (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this chapter by 30-2-326(3)(c) has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

(a) the consignor complies with the filing provision of the Chapter on Sales with respect to consignments (30-2-326(3)(c)) before the consignee receives possession of the goods;

(b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor;

(c) the holder of the security interest receives the notification within 5 years before the consignee receives possession of the goods; and

(d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of subsection (1) have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 59, Ch. 402, L. 1983.

Cross-References

GENERAL

Sale on approval and sale or return — consignment sales and rights of creditors, 30-2-326.

Priorities among conflicting security interests — inventory collateral, 30-9-312(2).

DEFINITIONAL

Consignment, 30-1-201(37).
Debtor, 30-9-105.
Goods, 30-9-105.
Notification, 30-1-201(26).
Proceeds, 30-9-306.
Security interest, 30-1-201(37).

30-9-115. *(Temporary)* **Investment property.** (1) In this chapter:

(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.

(d) "Commodity intermediary" means:

(i) a person who is registered as a futures commission merchant under the federal commodities laws; or

(ii) a person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in 30-8-116. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(f) "Investment property" means:

(i) a security, whether certificated or uncertificated;

(ii) a security entitlement;

(iii) a securities account;

(iv) a commodity contract; or

(v) a commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in subsections (4)(c) and (4)(d), a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in subsections (5)(c) and (5)(d), conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by 30-9-312(5), (6), and (7). Section 30-9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 76, Ch. 536, L. 1997.

30-9-116. *(Temporary)* **Security interest arising in purchase or delivery of financial asset.** (1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 77, Ch. 536, L. 1997.

30-9-117 through 30-9-121 reserved.

30-9-122. *(Effective July, 2001)* **Definitions and index of definitions.** (1) As used in this chapter, the following definitions apply:

(a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) (i) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance:

(A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(B) for services rendered or to be rendered;

(C) for a policy of insurance issued or to be issued;

(D) for a secondary obligation incurred or to be incurred;

(E) for energy provided or to be provided;

(F) for the use or hire of a vessel under a charter or other contract;

(G) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

(ii) The term includes a health-care-insurance receivable.

(iii) The term does not include:

(A) a right to payment evidenced by chattel paper or an instrument;

(B) a commercial tort claim;

(C) a deposit account;

(D) investment property;

(E) a letter-of-credit right; or

(F) a right to payment for money or funds advanced or sold, other than a right arising out of the use of a credit or charge card or information contained on or for use with the card.

(c) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(d) "Accounting", except as used in "accounting for", means a record:

(i) authenticated by a secured party;

(ii) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(iii) identifying the components of the obligations in reasonable detail.

(e) "Agricultural lien" means an interest, other than a security interest, in farm products:

(i) that secures payment or performance of an obligation for:

(A) goods or services furnished in connection with a debtor's farming operation; or

(B) rent on real property leased by a debtor in connection with its farming operation;

(ii) that is created by statute in favor of a person that:

(A) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(B) leased real property to a debtor in connection with the debtor's farming operation; and

(iii) whose effectiveness does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means:

(i) oil, gas, or other minerals that are subject to a security interest that:

(A) is created by a debtor having an interest in the minerals before extraction; and

(B) attaches to the minerals as extracted; or

(ii) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(g) "Authenticate" means to:

(i) sign; or

(ii) execute or adopt a symbol, or encrypt a record in whole or in part, with present intent to:

(A) identify the authenticating party; and

(B) adopt, accept, or establish the authenticity of a record or term.

(h) "Bank" means an organization that is engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union, and trust company.

(i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(k) (i) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in or a lease of specific goods or of specific goods and software used in the goods.

(ii) The term does not include a charter or other contract involving the use or hire of a vessel. If a transaction is evidenced both by a security agreement or lease and by an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(l) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(i) proceeds to which a security interest attaches under 30-9-335;

(ii) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(iii) goods that are the subject of a consignment.

(m) "Commercial tort claim" means a claim arising in tort if:

(i) the claimant is an organization; or

(ii) the claimant is an individual and the claim:

(A) arose in the course of the claimant's business or profession; and

(B) does not include damages arising out of personal injury to or the death of an individual.

(n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.

(p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(q) "Commodity intermediary" means a person that:

(i) is registered as a futures commission merchant under federal commodities law; or

(ii) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(r) "Communicate" means:

(i) to send a written or other tangible record;

(ii) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(iii) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(s) "Consignee" means a merchant to which goods are delivered in a consignment.

(t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(i) the merchant:

(A) deals in goods of that kind under a name other than the name of the person making delivery;

(B) is not an auctioneer; and

(C) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(ii) with respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(iii) the goods are not consumer goods immediately before delivery; and

(iv) the transaction does not create a security interest that secures an obligation.

(u) "Consignor" means a person that delivers goods to a consignee in a consignment.

(v) "Consumer debtor" means a debtor in a consumer transaction.

(w) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(x) "Consumer-goods transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes; and

(ii) a security interest in consumer goods or in consumer goods and software that is used, licensed, or bought for use primarily for personal, family, or household purposes secures the obligation.

(y) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(z) "Consumer transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes;

(ii) a security interest secures the obligation; and

(iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes a consumer-goods transaction.

(aa) "Continuation statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(bb) "Debtor" means:

(i) a person having a property interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(ii) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(iii) a consignee.

(cc) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or an account evidenced by an instrument.

(dd) "Document" means a document of title or a receipt of the type described in 30-7-201(2).

(ee) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(ff) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes a mortgage and other lien on real property.

(gg) "Equipment" means goods other than inventory, farm products, or consumer goods.

(hh) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and that are:

(i) crops grown, growing, or to be grown, including:

(A) crops produced on trees, vines, and bushes; and

(B) aquatic goods produced in aquacultural operations;

(ii) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(iii) supplies used or produced in a farming operation; or

(iv) products of crops or livestock in their unmanufactured states.

(ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(jj) "File number" means the number assigned to an initial financing statement pursuant to 30-9-539(1).

(kk) "Filing office" means an office designated in 30-9-521 as the place to file a financing statement.

(ll) "Filing-office rule" means a rule adopted pursuant to 30-9-546.

(mm) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying the requirements of 30-9-522(1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures.

(oo) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(pp) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes a payment intangible and software.

(qq) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(rr) (i) "Goods" means all things that are movable when a security interest attaches. The term includes:

(A) fixtures;

(B) standing timber that is to be cut and removed under a conveyance or contract for sale;

(C) the unborn young of animals;

(D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and

(E) manufactured homes.

(ii) The term also includes a computer program structurally integrated with goods, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the program or informational content if:

(A) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(B) by becoming the owner of the goods, a person would acquire a right to use the program in connection with the goods.

(iii) The term does not include a program integrated with goods that consist solely of the medium with which the program is integrated. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(ss) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization with a separate corporate existence only if the organization is eligible to issue debt obligations on which interest is exempt from income taxation under the laws of the United States.

(tt) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health care goods or services provided.

(uu) (i) "Instrument" means:

(A) a negotiable instrument; or

(B) any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment.

(ii) The term does not include:

(A) investment property;

(B) a letter of credit; or

(C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(vv) "Inventory" means goods, other than farm products, that:

(i) are leased by a person as lessor;

(ii) are held by a person for sale or lease or to be furnished under contracts of service;

(iii) are furnished by a person under a contract of service; or

(iv) consist of raw materials, work in process, or materials used or consumed in a business.

(ww) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(xx) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(yy) (i) "Letter-of-credit right" means a right to payment and performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

(ii) The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(zz) "Lien creditor" means:

(i) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(ii) an assignee for benefit of creditors from the time of assignment;

(iii) a trustee in bankruptcy from the date of the filing of the petition; and

(iv) a receiver in equity from the time of appointment.

(aaa) "Manufactured home" means a structure, transportable in one or more sections, that in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or that when erected on site is 320 or more square feet and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

(bbb) "Manufactured-home transaction" means a secured transaction:

(i) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(ii) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(ccc) "Mortgage" means a consensual interest in real property, including fixtures, that is created by a mortgage, trust deed, or similar transaction.

(ddd) "New debtor" means a person that becomes bound as debtor under 30-9-213(4) by a security agreement previously entered into by another person.

(eee) (i) "New value" means:

(A) money;

(B) money's worth in property, services, or new credit; or

(C) release by a transferee of an interest in property previously transferred to the transferee.

(ii) The term does not include an obligation substituted for another obligation.

(fff) "Noncash proceeds" means proceeds other than cash proceeds.

(ggg) (i) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(A) owes payment or other performance of the obligation;

(B) has provided property other than the collateral to secure payment or other performance of the obligation; or

(C) is otherwise accountable in whole or in part for payment or other performance of the obligation.

(ii) The term does not include an issuer or a nominated person under a letter of credit.

(hhh) "Original debtor" means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under 30-9-213(4).

(iii) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(jjj) "Person related to", with respect to an individual, means:

(i) the spouse of the individual;

(ii) a brother, brother-in-law, sister, or sister-in-law of the individual;

(iii) an ancestor or lineal descendant of the individual or the individual's spouse; and

(iv) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(kkk) "Person related to", with respect to an organization, means:

(i) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(ii) an officer or director of, or a person performing similar functions with respect to, the organization;

(iii) an officer or director of, or a person performing similar functions with respect to, a person described in subsection (1)(kkk)(i);

(iv) the spouse of an individual described in subsection (1)(kkk)(i), (1)(kkk)(ii), or (1)(kkk)(iii); or

(v) an individual who is related by blood or marriage to an individual described in subsections (1)(kkk)(i), (1)(kkk)(ii), (1)(kkk)(iii), or (1)(kkk)(iv) and shares the same home with the individual.

(lll) "Proceeds" means the following property:

(i) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(ii) whatever is collected on, or distributed on account of, collateral;

(iii) rights arising out of collateral;

(iv) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; and

(v) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

(mmm) "Promissory note" means an instrument that:

(i) evidences a promise to pay a monetary obligation;

(ii) does not evidence an order to pay; and

(iii) does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(nnn) "Proposal" means a record authenticated by a secured party and including the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to 30-9-620 through 30-9-622.

(ooo) "Public-finance transaction" means a secured transaction in connection with which:

(i) bonds, debentures, certificates of participation, or similar debt securities are issued;

(ii) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(iii) the debtor, the obligor, the secured party, the account debtor or other person obligated on collateral, the assignor or assignee of a secured obligation, or the assignor or assignee of a security interest is a state or a governmental unit of a state.

(ppp) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(qqq) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(rrr) "Registered organization" means an organization organized solely under the law of one state or the United States and as to which the state or the United States is required to maintain a public record showing the organization to have been organized.

(sss) "Secondary obligor" means an obligor to the extent that:

(i) the obligor's obligation is secondary; or

(ii) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(ttt) "Secured party" means:

(i) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(ii) a person that holds an agricultural lien;

(iii) a consignor;

(iv) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(v) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(vi) a person that holds a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), 30-2A-508(5), 30-4-208, or 30-5-118.

(uuu) "Security agreement" means an agreement that creates or provides for a security interest.

(vvv) "Send", in connection with a record or notification, means to:

(i) deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(ii) cause the record or notification to be received within the time that it would have been received if properly sent under subsection (1)(vvv)(i).

(www) (i) "Software" means a computer program, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the computer program or informational content.

(ii) The term does not include a computer program that is contained in goods unless the goods are a computer or computer peripheral.

(xxx) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(yyy) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(zzz) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(aaaa) "Termination statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(bbbb) "Transmitting utility" means a person primarily engaged in the business of:

(i) operating a railroad, subway, street railway, or trolley bus;

(ii) transmitting electric or electronic communications;

(iii) transmitting goods by pipeline or sewer; or

(iv) transmitting or producing and transmitting electricity, steam, gas, or water.

(2) The following definitions in other chapters apply to this chapter:

"Applicant" 30-5-122.
"Beneficiary" 30-5-122.
"Broker" 30-8-112.
"Certificated security" 30-8-112.
"Check" 30-3-104.
"Clearing corporation" 30-8-112.
"Contract for sale" 30-2-106.
"Customer" 30-4-104.
"Entitlement holder" 30-8-112.
"Financial asset" 30-8-112.
"Holder in due course" 30-3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right) 30-5-122.
"Issuer" (with respect to a security) 30-8-211.
"Lease" 30-2A-103.
"Lease agreement" 30-2A-103.
"Lease contract" 30-2A-103.
"Leasehold interest" 30-2A-103.
"Lessee" 30-2A-103.

"Lessee in ordinary course of business" 30-2A-103.
"Lessor" 30-2A-103.
"Lessor's residual interest" 30-2A-103.
"Letter of credit" 30-5-122.
"Merchant" 30-2-104.
"Negotiable instrument" 30-3-104.
"Nominated person" 30-5-122.
"Note" 30-3-104.
"Proceeds of a letter of credit" 30-5-134.
"Prove" 30-3-102.
"Sale" 30-2-106.
"Securities account" 30-8-501.
"Securities intermediary" 30-8-112.
"Security" 30-8-112.
"Security certificate" 30-8-112.
"Security entitlement" 30-8-112.
"Uncertificated security" 30-8-112.

(3) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: **En. Sec. 1, Ch. 305, L. 1999.**

30-9-123. *(Effective July 1, 2001)* **Purchase-money security interest — application of payments — burden of establishing purchase-money security interest.** (1) In this section:

(a) "purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(b) "purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(2) A security interest in goods is a purchase-money security interest:

(a) to the extent that the goods are purchase-money collateral with respect to that security interest;

(b) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(c) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(3) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(a) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(b) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(4) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(5) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(a) in accordance with any reasonable method of application to which the parties agree;

(b) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(c) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(i) to obligations that are not secured; and

(ii) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(6) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(a) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(b) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(c) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(7) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(8) The limitation of the rules in subsections (5), (6), and (7) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

History: En. Sec. 2, Ch. 305, L. 1999.

30-9-124. *(Effective July 1, 2001)* **Control of deposit account.** (1) A secured party has control of a deposit account if:

(a) the secured party is the bank with which the deposit account is maintained;

(b) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the account without further consent by the debtor; or

(c) the secured party becomes the bank's customer with respect to the deposit account.

(2) A secured party that has satisfied the requirements of subsection (1) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

History: En. Sec. 3, Ch. 305, L. 1999.

30-9-125. *(Effective July 1, 2001)* **Control of electronic chattel paper.** A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists that is unique, identifiable, and except as otherwise provided in subsections (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

History: **En. Sec. 4, Ch. 305, L. 1999.**

30-9-126. *(Effective July 1, 2001)* **Control of investment property.** (1) A person has control of a certificated security, or security entitlement as provided in 30-8-116.

(2) A secured party has control of a commodity contract if:

(a) the secured party is the commodity intermediary with which the commodity contract is carried; or

(b) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(3) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

History: **En. Sec. 5, Ch. 305, L. 1999.**

30-9-127. *(Effective July 1, 2001)* **Control of letter-of-credit right.** A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer of any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under 30-5-134(3) or otherwise applicable law or practice.

History: **En. Sec. 6, Ch. 305, L. 1999.**

30-9-128. *(Effective July 1, 2001)* **Sufficiency of description.** (1) Except as otherwise provided in subsections (3), (4), and (5), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(2) Except as otherwise provided in subsection (4), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(a) specific listing;

(b) category;

(c) except as otherwise provided in subsection (5), a type of collateral defined in chapters 1 through 9;

(d) quantity;

(e) computational or allocational formula or procedure; or

(f) except as otherwise provided in subsection (3), any other method, if the identity of the collateral is objectively determinable.

(3) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(4) Except as otherwise provided in subsection (5), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(a) the collateral by those terms or as investment property; or

(b) the underlying financial asset or commodity contract.

(5) A description only by type of collateral defined in chapters 1 through 9 is an insufficient description of:

(a) a commercial tort claim; or

(b) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

History: **En. Sec. 7, Ch. 305, L. 1999.**

30-9-129. *(Effective July 1, 2001)* **Scope.** (1) Except as otherwise provided in subsections (3) and (4), this chapter applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account, chattel paper, payment intangible, or promissory note;

(d) a consignment;

(e) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), to the extent provided in 30-9-130; and

(f) a security interest arising under 30-4-208 or 30-5-118.

(2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(3) This chapter does not apply to the extent that:

(a) a statute, regulation, or treaty of the United States preempts this chapter;

(b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(c) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 30-5-134.

(4) This chapter does not apply to:

(a) a landlord's lien, other than an agricultural lien;

(b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 30-9-353 applies with respect to priority of the lien;

(c) an assignment of a claim for wages, salary, or other compensation of an employee;

(d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(f) an assignment of a right to payment under a contract to an assignee that is also obliged to perform under the contract;

(g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds;

(i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) a right of recoupment or setoff, but:

(i) 30-9-360 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(ii) 30-9-444 applies with respect to defenses or claims of an account debtor;

(k) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(i) liens on real property in 30-9-213 and 30-9-328;

(ii) fixtures in 30-9-354;

(iii) fixture filings in 30-9-521, 30-9-522, 30-9-532, 30-9-536, and 30-9-539; and

(iv) security agreements covering personal and real property in 30-9-604;

(l) an assignment of a claim arising in tort, other than a commercial tort claim, but 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds; or

(m) an assignment of a deposit account in a consumer transaction, except that 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds.

History: **En. Sec. 8, Ch. 305, L. 1999.**

30-9-130. *(Effective July 1, 2001)* **Security interests arising under chapter 2 or 2A.** A security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5) is subject to this chapter. However, until the debtor obtains possession of the goods:

(1) the security interest is enforceable, even if the requirements of 30-9-213(2)(c) have not been met;

(2) filing is not required to perfect the security interest;

(3) the rights of the secured party on default by the debtor are governed by chapter 2 or 2A, as applicable; and

(4) the security interest has priority over a conflicting security interest created by the debtor.

History: **En. Sec. 9, Ch. 305, L. 1999.**

Part 2

Effectiveness of Security Agreement — Attachment of Security Interest — Rights of Parties to Security Agreement

30-9-201. *(Temporary)* **General validity of security agreement.** Except as otherwise provided by this code a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: **En. Sec. 9-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-201.**

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Passing of title — reservation for security — limited application of section, 30-2-401.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in same collateral, 30-9-312.

DEFINITIONAL

Collateral, 30-9-105.

Creditor, 30-1-201.

Party, 30-1-201.

Purchaser, 30-1-201.

Security agreement, 30-9-105.

30-9-202. *(Temporary)* **Title to collateral immaterial.** Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: **En. Sec. 9-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-202.**

Cross-References

GENERAL

Passing of title — reservation for security — limited application of section, 30-2-401.

Effect of seller's tender — delivery on condition, 30-2-507.

DEFINITIONAL

Collateral, 30-9-105.

Debtor, 30-9-105.

Remedy, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.

30-9-203. *(Temporary)* **Attachment and enforceability of security interest — proceeds, formal requisites.** (1) Subject to the provisions of 30-4-208 on the security interest of a collecting bank, 30-9-115 and 30-9-116 on security interests in investment property, and 30-9-113 on a security interest arising under the Chapter on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by 30-9-306.

(4) A transaction, although subject to this chapter, is also subject to Title 23, chapter 2, part 5, to Title 23, chapter 2, part 6, to Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959, to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301 through 81-8-305, Title 61, chapter 3, Title 16, chapters 1 through 6, and Title 31, chapter 1, part 4, as amended, and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-203; amd. Sec. 60, Ch. 402, L. 1983; amd. Sec. 2, Ch. 164, L. 1989; amd. Sec. 2, Ch. 165, L. 1989; amd. Sec. 78, Ch. 536, L. 1997.

Cross-References

GENERAL

Statute of frauds for kinds of personal property not otherwise covered, 30-1-206.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

Sufficiency of description, 30-9-110.

Security interests arising under chapter on sales, 30-9-113.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

"Proceeds" — secured party's rights and disposition of collateral, 30-9-306.

Priorities among conflicting security interests in same collateral, 30-9-312.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Party, 30-1-201.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.

30-9-204. *(Temporary)* **After-acquired property — future advances.** (1) Except as provided in subsection (2) a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (30-9-314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (30-9-105(1)). *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-204; amd. Sec. 61, Ch. 402, L. 1983.

Cross-References

GENERAL

When after-required collateral not security for antecedent debt, 30-9-108.

Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory", 30-9-109.

Sufficiency of description, 30-9-110.

Attachment and enforceability of security interest — proceeds — formal requisites, 30-9-203.

Use or disposition of collateral without accounting permissible, 30-9-205.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing required to perfect security interest, 30-9-302.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Lien on future interest, 71-3-105.

DEFINITIONAL

Account, 30-9-106.
Agreement, 30-1-201.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Contract, 30-1-201.
Debtor, 30-9-105.
Purchase, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-205. *(Temporary)* **Use or disposition of collateral without accounting permissible.** A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle, or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle, or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-205; amd. Sec. 62, Ch. 402, L. 1983.

Cross-References

GENERAL

General validity of security agreement, 30-9-201.

After-acquired property — future advances, 30-9-204.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Priority when goods commingled or processed, 30-9-315.

Secured party not obligated on contract of debtor, 30-9-317.

Defrauding creditors, 45-6-315.

DEFINITIONAL

Account, 30-9-106.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Creditor, 30-1-201.
Debtor, 30-9-105.

Goods, 30-9-105.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-206. *(Temporary)* **Agreement not to assert defenses against assignee — modification of sales warranties where security agreement exists.** (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Chapter on Commercial Paper (Chapter 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the Chapter on Sales (Chapter 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-206.

Cross-References

GENERAL

Scope — certain security and other transactions excluded from chapter 2, 30-2-102.

Exclusion or modification of warranties, 30-2-316.

Rights of holder in due course, 30-3-305.

Attachment and enforceability of security interest — proceeds — formal requisites, 30-9-203.

DEFINITIONAL

Agreement, 30-1-201.
Consumer goods, 30-9-109.
Good faith, 30-1-201.
Goods, 30-9-105.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Negotiable instrument, 30-3-104.
Notice, 30-1-201.
Purchase money security interest, 30-9-107.
Sale, 30-2-106.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-207. *(Temporary)* **Rights and duties when collateral is in secured party's possession.** (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession:

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of

appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: **En. Sec. 9-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-207.**

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Delivery without endorsement — right to compel endorsement, 30-7-506.

Priority when goods commingled or processed, 30-9-315.

Default, Title 30, ch. 9, part 5.

Defrauding creditors, 45-6-315.

Holder of lien not entitled to compensation, 71-3-112.

DEFINITIONAL

Chattel paper, 30-9-105.
Collateral, 30-9-105.
Debtor, 30-9-105.
Instrument, 30-9-105.
Money, 30-1-201.
Party, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-208. *(Temporary)* **Request for statement of account or list of collateral.** (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within 2 weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every 6 months without charge. The secured party may require payment of a charge not exceeding $10 for each additional statement furnished. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: **En. Sec. 9-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-208.**

Cross-References

GENERAL

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Good faith, 30-1-201.
Know, 30-1-201.
Person, 30-1-201.
Receive, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Written, 30-1-201.

30-9-209 and 30-9-210 reserved.

30-9-211. *(Effective July 1, 2001)* **General effectiveness of security agreement.** (1) Except as otherwise provided in chapters 1 through 9, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(2) A transaction subject to this chapter is subject to any applicable rule of law that establishes a different rule for consumers, to Title 30, chapter 14, part 1, and to Title 31, chapter 1.

(3) In case of conflict between this chapter and a rule of law, statute, or regulation described in subsection (2), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (2) has only the effect that the statute or regulation specifies.

(4) This chapter does not:

(a) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (2); or

(b) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

History: En. Sec. 10, Ch. 305, L. 1999.

30-9-212. *(Effective July 1, 2001)* **Title to collateral immaterial.** Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this chapter with regard to rights, obligations, and remedies apply whether title to collateral is in the secured party or the debtor.

History: En. Sec. 11, Ch. 305, L. 1999.

30-9-213. *(Effective July 1, 2001)* **Attachment and enforcement of security interest — proceeds — supporting obligations — formal requisites.** (1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(2) Except as otherwise provided in subsections (3) through (9), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(a) value has been given;

(b) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(c) one of the following conditions is met:

(i) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(ii) the collateral is not a certificated security and is in the possession of the secured party under 30-9-333 pursuant to the debtor's security agreement;

(iii) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under 30-8-331 pursuant to the debtor's security agreement; or

(iv) the collateral is a deposit account, electronic chattel paper, investment property, or a letter-of-credit right and the secured party has control under 30-9-124, 30-9-125, 30-9-126, or 30-9-127 pursuant to the debtor's security agreement.

(3) Subsection (2) is subject to 30-4-208 on the security interest of a collecting bank, 30-5-118 on the security interest of a letter-of-credit issuer or nominated person, 30-9-130 on a security interest arising under chapter 2 or 2A, and 30-9-216 on security interests in investment property.

(4) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

(a) the security agreement becomes effective to create a security interest in the person's property; or

(b) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(5) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(a) the agreement satisfies the requirements of subsection (2)(c) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(b) another agreement is not necessary to make a security interest in the property enforceable.

(6) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by 30-9-335 and is also attachment of a security interest in a supporting obligation for the collateral.

(7) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(8) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(9) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

History: En. Sec. 12, Ch. 305, L. 1999.

30-9-214. *(Effective July 1, 2001)* **After acquired property — future advances.** (1) Except as otherwise provided in subsection (2), a security agreement may create or provide for a security interest in after-acquired collateral.

(2) A security interest does not attach under a term constituting an after-acquired property clause to:

(a) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(b) a commercial tort claim.

(3) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

History: En. Sec. 13, Ch. 305, L. 1999.

30-9-215. *(Effective July 1, 2001)* **Use or disposition of collateral permissible.** (1) A security interest is not invalid or fraudulent against creditors solely because:

(a) the debtor has the right or ability to:

(i) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(ii) collect, compromise, enforce, or otherwise deal with collateral;

(iii) accept the return of collateral or make repossessions; or

(iv) use, commingle, or dispose of proceeds; or

(b) the secured party fails to require the debtor to account for proceeds or replace collateral.

(2) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

History: En. Sec. 14, Ch. 305, L. 1999.

30-9-216. *(Effective July 1, 2001)* **Security interest arising in purchase or delivery of financial asset.** (1) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(a) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(b) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(2) The security interest described in subsection (1) secures the person's obligation to pay for the financial asset.

(3) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(a) the security or other financial asset is:

(i) in the ordinary course of business transferred by delivery with any necessary indorsement or assignment; and

(ii) delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(b) the agreement calls for delivery against payment.

(4) The security interest described in subsection (3) secures the obligation to make payment for the delivery.

History: En. Sec. 15, Ch. 305, L. 1999.

30-9-217. *(Effective July 1, 2001)* **Rights and duties of secured party having possession or control of collateral.** (1) Except as otherwise provided in subsection (4), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Except as otherwise provided in subsection (4), if a secured party has possession of collateral:

(a) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(c) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(d) the secured party may use or operate the collateral:

(i) for the purpose of preserving the collateral or its value;

(ii) as permitted by an order of a court having competent jurisdiction; or

(iii) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(3) Except as otherwise provided in subsection (4), a secured party having possession of collateral or control of collateral under 30-9-124, 30-9-125, 30-9-126, or 30-9-127:

(a) may hold as additional security any proceeds, except money or funds, received from the collateral;

(b) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(c) may create a security interest in the collateral.

(4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(a) subsection (1) does not apply unless the secured party is entitled by agreement:

(i) to charge back uncollected collateral; or

(ii) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(b) subsections (2) and (3) do not apply.

History: En. Sec. 16, Ch. 305, L. 1999.

30-9-218. *(Effective July 1, 2001)* **Additional duties of secured party having control of collateral.** (1) This section applies if:

(a) there is no outstanding secured obligation; and

(b) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within 10 days after receiving an authenticated demand by the debtor:

(a) a secured party having control of a deposit account under 30-9-124(1)(b) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(b) a secured party having control of a deposit account under 30-9-124(1)(c) shall:

(i) pay the debtor the balance on deposit in the deposit account; or

(ii) transfer the balance on deposit into a deposit account in the debtor's name;

(c) a secured party, other than a buyer, having control of electronic chattel paper under 30-9-125 shall:

(i) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(ii) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(iii) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party;

(d) a secured party having control of investment property under 30-8-116(4)(b) or 30-9-126(2) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(e) a secured party having control of a letter-of-credit right under 30-9-127 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

History: En. Sec. 17, Ch. 305, L. 1999.

30-9-219. *(Effective July 1, 2001)* **Duties of secured party if account debtor has been notified of assignment.** (1) Except as otherwise provided in subsection (3), this section applies if:

(a) there is no outstanding secured obligation; and

(b) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under 30-9-446(1) an authenticated record that releases the account debtor from any further obligation to the secured party.

(3) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

History: En. Sec. 18, Ch. 305, L. 1999.

30-9-220. *(Effective July 1, 2001)* **Request for accounting — request regarding list of collateral or statement of account.** (1) In this section, the following definitions apply:

(a) "Request" means a record of a type described in subsection (1)(b), (1)(c), or (1)(d).

(b) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(c) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(d) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(2) Subject to subsections (3), (4), (5), and (6), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor shall comply with a request within 14 days after receipt:

(a) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(b) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(3) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(4) A person that receives a request regarding a list of collateral, that claims no interest in the collateral when it receives the request, and that claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(a) disclaiming any interest in the collateral; and

(b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's security interest in the collateral.

(5) A person that receives a request for an accounting or a request regarding a statement of account, that claims no interest in the obligations when it receives the request, and that claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(a) disclaiming any interest in the obligations; and

(b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(6) A debtor is entitled without charge to one response to a request under this section during any 6-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

History: En. Sec. 19, Ch. 305, L. 1999.

Part 3
Perfection and Priority

Part Cross-References

Priority of income withholding order for enforcement of child support, 40-5-423.

30-9-301. *(Temporary)* **Persons who take priority over unperfected security interests — right of "lien creditor".** (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under 30-9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that the person gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that the person gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 20 days after the debtor receives possession of the collateral, the secured party takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before the person becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-301; amd. Sec. 1, Ch. 406, L. 1979; amd. Sec. 63, Ch. 402, L. 1983; amd. Sec. 1, Ch. 167, L. 1985; amd. Sec. 79, Ch. 536, L. 1997.

Cross-References

GENERAL

After-acquired property — future advances, 30-9-204.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

When security interest perfected — continuity of perfection, 30-9-303.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Protection of buyers of goods, 30-9-307.

Priority of claims against liquidated bank, 32-1-534.

Priority of income withholding order for enforcement of child support, 40-5-423.

Liens, Title 71, ch. 3.

Possession under mortgage — how acquired, 81-8-312.

DEFINITIONAL

Account, 30-9-106.
Buyer in ordinary course of business, 30-1-201.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Creditor, 30-1-201.
Delivery, 30-1-201.
Document, 30-9-105.
General intangibles, 30-9-106.
Goods, 30-9-105.
Instrument, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Purchase money security interest, 30-9-107.
Representative, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-302. *(Temporary)* **When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply.** (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under 30-9-305;

(b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under 30-9-304 or in proceeds for a 10-day period under 30-9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered, and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in 30-9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (30-4-208) or arising under the Chapter on Sales or covered in subsection (3) of this section;

(g) an assignment for the benefit of all creditors of the transferor, and subsequent transfers by the assignee thereunder;

(h) a security interest in investment property that is perfected without filing under 30-9-115 or 30-9-116.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to:

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) the following statutes of this state: Title 61, chapter 3; Title 23, chapter 2, parts 5 and 6; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter (part 4) apply to a security interest in that collateral created by the person as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (30-9-103(2)).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in 30-9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-302, Ch. 264, L. 1963; amd. Sec. 13, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-302; amd. Sec. 64, Ch. 402, L. 1983; amd. Sec. 80, Ch. 536, L. 1997.

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Security interests arising under chapter on sales, 30-9-113.

When security interest perfected — continuity of perfection, 30-9-303.

Protection of buyers of goods, 30-9-307.

Filing, Title 30, ch. 9, part 4.

Motor vehicles — mortgage filed with registrar, 61-3-103.

DEFINITIONAL

Account, 30-9-106.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Creditor, 30-1-201.
Debtor, 30-9-105.
Delivery, 30-1-201.
Document, 30-9-105.
Equipment, 30-9-109.
Fixture, 30-9-313.
Fixture filing, 30-9-313.
Instrument, 30-9-105.
Inventory, 30-9-109.
Proceeds, 30-9-306.
Purchase, 30-1-201.
Purchase money security interest, 30-9-107.
Sale, 30-2-106.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-303. *(Temporary)* **When security interest is perfected — continuity of perfection.** (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in 30-9-115, 30-9-302, 30-9-304, 30-9-305, and 30-9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-303; amd. Sec. 81, Ch. 536, L. 1997.

Cross-References

GENERAL

Perfection of security interests in multiple state jurisdictions, 30-9-103.

After-acquired property — future advances, 30-9-204.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Priorities among conflicting interests in same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

DEFINITIONAL

Security interest, 30-1-201.

30-9-304. *(Temporary)* **Perfection of security interest in instruments, documents, proceeds of a written letter of credit, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession.** (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the right to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of 30-9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange; but priority between conflicting security interests in the goods is subject to 30-9-312(3); or

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with applicable provisions of this chapter. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-304; amd. Sec. 65, Ch. 402, L. 1983; amd. Sec. 82, Ch. 536, L. 1997.

Cross-References

GENERAL

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

When security interest perfected — continuity of perfection, 30-9-303.

When possession by secured party perfects security interest without filing, 30-9-305.

Priorities among conflicting security interests in same collateral, 30-9-312.

Financing programs of housing — community planning, 90-6-108.

DEFINITIONAL

Chattel paper, 30-9-105.
Debtor, 30-9-105.
Document, 30-9-105.
Goods, 30-9-105.
Instrument, 30-9-105.
Receives notification, 30-1-201.
Sale, 30-2-106.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.
Written, 30-1-201.

30-9-305. *(Temporary)* **When possession by secured party perfects security interest without filing.** A security interest in goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-305; amd. Sec. 66, Ch. 402, L. 1983; amd. Sec. 83, Ch. 536, L. 1997.

Cross-References

GENERAL

After-acquired property — future advances, 30-9-204.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

When security interest perfected — continuity of perfection, 30-9-303.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

DEFINITIONAL

Chattel paper, 30-9-105.
Collateral, 30-9-105.
Documents, 30-9-105.
Goods, 30-9-105.
Instruments, 30-9-105.
Receives notification, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-306. *(Temporary)* **"Proceeds" — secured party's rights on disposition of collateral.** (1) "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange, or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) (a) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless:

(i) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;

(ii) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds;

(iii) the original collateral was investment property and the proceeds are identifiable cash proceeds; or

(iv) the security interest in the proceeds is perfected before the expiration of the 10-day period.

(b) Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this subsection (4)(d) is:

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of:

(A) the payments to the secured party on account of cash proceeds received by the debtor during such period; and

(B) the cash proceeds received by the debtor during such period to which the secured party is entitled under subsections (4)(a) through (4)(c).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. The security interest is prior to a security interest asserted under subsection (5)(a) to the extent that the transferee of the chattel paper was entitled to priority under 30-9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. The security interest is subordinate to a security interest asserted under subsection (5)(a).

(d) A security interest of an unpaid transferee asserted under subsection (5)(b) or (5)(c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-306; amd. Sec. 67, Ch. 402, L. 1983; amd. Sec. 84, Ch. 536, L. 1997.

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Attachment and enforceability of security interest — proceeds — formal requisites, 30-9-203.

Use or disposition of collateral without accounting permissible, 30-9-205.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Protection of buyers of goods, 30-9-307.

Protection of purchasers of instruments, documents, and securities, 30-9-309.

Priorities among conflicting security interests in same collateral, 30-9-312.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

DEFINITIONAL

Account, 30-9-106.

Bank, 30-1-201.

Chattel paper, 30-9-105.

Check, 30-3-104.
Collateral, 30-9-105.
Creditors, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Insolvency proceedings, 30-1-201.
Money, 30-1-201.
Purchaser, 30-1-201.
Sale, 30-2-106.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-307. *(Temporary)* **Protection of buyers of goods.** (1) A buyer in ordinary course of business (subsection (9) of 30-1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of $2,500 (other than fixtures, see 30-9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.*

History: En. Sec. 9-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-307.

Cross-References

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Document of title to goods defeated in certain cases, 30-7-503.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Priorities among conflicting security interests in same collateral, 30-9-312.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.

Consumer goods, 30-9-109.
Goods, 30-9-105.
Knows and knowledge, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-308. *(Temporary)* **Purchase of chattel paper and instruments.** A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

(1) which is perfected under 30-9-304 (permissive filing and temporary perfection) or under 30-9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(2) which is claimed merely as proceeds of inventory subject to a security interest (30-9-306), even though he knows that the specific paper is subject to the security interest. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-308; amd. Sec. 68, Ch. 402, L. 1983.

Cross-References

GENERAL

When possession by secured party perfects security interest without filing, 30-9-305.

DEFINITIONAL

Chattel paper, 30-9-105.
Instrument, 30-9-105.
Inventory, 30-9-109.
Knowledge, 30-1-201.
Proceeds, 30-9-306.
Purchaser, 30-1-201.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-309. *(Temporary)* **Protection of purchasers of instruments, documents, and securities.** Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (30-3-302) or a holder to whom a negotiable document of title has been duly negotiated (30-7-501) or a protected purchaser of a security (30-8-333), and the holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to the holders or purchasers. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.*

History: En. Sec. 9-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-309; amd. Sec. 69, Ch. 402, L. 1983; amd. Sec. 85, Ch. 536, L. 1997.

Cross-References

GENERAL

Negotiable instruments, Title 30, ch. 3.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Investment securities, Title 30, ch. 8.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

Purchase of chattel paper and instruments, 30-9-308.

DEFINITIONAL

Document of title, 30-1-201.
Duly negotiated, 30-7-501.
Holder, 30-1-201.
Holder in due course, 30-3-302, 30-9-105.
Negotiable instrument, 30-3-104.
Notice, 30-1-201.
Purchaser, 30-1-201.
Security interest, 30-1-201.

30-9-310. *(Temporary)* **Priority of certain liens arising by operation of law.** When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-310.

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Priorities among conflicting security interests in same collateral, 30-9-312.

How liens created, 71-3-102.

No lien for claim not due, 71-3-103.

DEFINITIONAL

Goods, 30-9-105.
Person, 30-1-201.
Security interest, 30-1-201.

30-9-311. *(Temporary)* **Alienability of debtor's rights — judicial process.** The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-311.

Cross-References

GENERAL

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in same collateral, 30-9-312.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Rights, 30-1-201.
Sale, 30-2-106.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-312. *(Temporary)* **Priorities among conflicting security interests in the same collateral.** (1) The rules of priority stated in other sections of this part and in the following sections shall govern where applicable: 30-4-210 with respect to the security interest of collecting banks in items being collected, accompanying documents, and proceeds; 30-9-103 on security interests related to other jurisdictions; 30-9-114 on consignments; and 30-9-115 on security interests in investment property.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that the earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:

(i) before the date of the filing made by the purchase money secured party; or

(ii) before the beginning of the 21-day period if the purchase money security interest is temporarily perfected without filing or possession (30-9-304(5)); and

(c) the holder of the conflicting security interest receives notification within 5 years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing the inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral must be determined according to the following rules:

(a) Conflicting security interests rank according to priority in the time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5), a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under 30-9-115 or 30-9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) or 30-9-115(5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-312; amd. Sec. 2, Ch. 406, L. 1979; amd. Sec. 70, Ch. 402, L. 1983; amd. Sec. 8, Ch. 80, L. 1985; amd. Sec. 2, Ch. 167, L. 1985; amd. Sec. 86, Ch. 536, L. 1997.

Cross-References

GENERAL

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Perfection of security interest in multiple state jurisdictions, 30-9-103.

When after-acquired collateral not security for antecedent debt, 30-9-108.

Consignment, 30-9-114.

When security interest perfected — continuity of perfection, 30-9-303.

Purchase of chattel paper and instruments, 30-9-308.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

DEFINITIONAL

Chattel paper, 30-9-105.

Collateral, 30-9-105.

Collecting bank, 30-4-105.

Debtor, 30-9-105.

Documents, 30-9-105.

Give notice, 30-1-201.

Goods, 30-9-105.

Instruments, 30-9-105.

Inventory, 30-9-109.

Knowledge, 30-1-201.

Person, 30-1-201.

Proceeds, 30-9-306.

Purchase money security interest, 30-9-107.

Receives notification, 30-1-201.

Secured party, 30-9-105.

Security interest, 30-1-201.

Value, 30-1-201.

30-9-313. *(Temporary)* **Priority of security interests in fixtures.** (1) In this section and in the provisions of part 4 of this chapter referring to fixture filing, unless the context otherwise requires:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of 30-9-402(5);

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures, but no security interest exists under this chapter in ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of real estate if:

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate;

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate;

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this chapter; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-313; amd. Sec. 71, Ch. 402, L. 1983.

Cross-References

GENERAL

Goods to be severed from realty — recording, 30-2-107.

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

After-acquired property — future advances, 30-9-204.

Security interest — when perfected, 30-9-303.

Priorities among conflicting security interests in same collateral, 30-9-312.

Filing, Title 30, ch. 9, part 4.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Collateral, 30-9-105.
Contract, 30-1-201.
Creditor, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.
Writing, 30-1-201.

30-9-314. *(Temporary)* **Accessions.** (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to 30-9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in

writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over:

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsection (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-314.

Cross-References

GENERAL

Attachment and enforceability of security interest — proceeds — formal requisites, 30-9-203.

After-acquired property — future advances, 30-9-204.

When security interest perfected — continuity of perfection, 30-9-303.

Priorities among conflicting security interests in same collateral, 30-9-312.

Priority of security interests in fixtures, 30-9-313.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Collateral, 30-9-105.
Creditor, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.
Writing, 30-1-201.

30-9-315. *(Temporary)* **Priority when goods are commingled or processed.** (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled. In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under 30-9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-315.

Cross-References

GENERAL

Attachment and enforceability of security interest — proceeds — formal requisites, 30-9-203.

After-acquired property — future advances, 30-9-204.

When security interest perfected — continuity of perfection, 30-9-303.

Priorities among conflicting security interests in same collateral, 30-9-312.

DEFINITIONAL

Goods, 30-9-105.

Security interest, 30-1-201.

30-9-316. *(Temporary)* **Priority subject to subordination.** Nothing in this chapter prevents subordination by agreement by any person entitled to priority. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-316.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Priorities among conflicting security interests in same collateral, 30-9-312.

DEFINITIONAL

Agreement, 30-1-201.

Person, 30-1-201.

30-9-317. *(Temporary)* **Secured party not obligated on contract of debtor.** The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-317.

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

DEFINITIONAL

Collateral, 30-9-105.

Contract, 30-1-201.

Debtor, 30-9-105.

Secured party, 30-9-105.

Security interest, 30-1-201.

30-9-318. *(Temporary)* **Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment.** (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in 30-9-206 the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the

account debtor's consent to such assignment or security interest. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-318; amd. Sec. 72, Ch. 402, L. 1983; amd. Sec. 9, Ch. 80, L. 1985.

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

Use or disposition of collateral without accounting permissible, 30-9-205.

Purchase of chattel paper and instruments, 30-9-308.

DEFINITIONAL

Account, 30-9-106.
Account debtor, 30-9-105.
Agreement, 30-1-201.
Contract, 30-1-201.
Good faith, 30-1-201.
Party, 30-1-201.
Receives notification, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Seasonably, 30-1-204.
Term, 30-1-201.

30-9-319 and 30-9-320 reserved.

30-9-321. *(Effective July 1, 2001)* **Law governing perfection and priority of security interests.** Except as otherwise provided in 30-9-323 through 30-9-326, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(a) perfection of a security interest in the goods by filing a fixture filing;

(b) perfection of a security interest in timber to be cut; and

(c) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

History: En. Sec. 20, Ch. 305, L. 1999.

30-9-322. *(Effective July 1, 2001)* **Law governing perfection and priority of agricultural liens.** While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

History: En. Sec. 21, Ch. 305, L. 1999.

30-9-323. *(Effective July 1, 2001)* **Law governing perfection and priority of security interests in goods covered by a certificate of title.** (1) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(2) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(3) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

History: **En. Sec. 22, Ch. 305, L. 1999.**

30-9-324. *(Effective July 1, 2001)* **Law governing perfection and priority of security interests in deposit accounts.** (1) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(2) The following rules determine a bank's jurisdiction for purposes of this part:

(a) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of chapters 1 through 9 or this part, that jurisdiction is the bank's jurisdiction.

(b) If subsection (2)(a) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(c) If subsection (2)(a) or (2)(b) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(d) If none of the preceding subsections apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(e) If none of the preceding subsections apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

History: **En. Sec. 23, Ch. 305, L. 1999.**

30-9-325. *(Effective July 1, 2001)* **Law governing perfection and priority of security interests in investment property.** (1) Except as otherwise provided in subsection (3), the following rules apply:

(a) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(b) The local law of the issuer's jurisdiction as specified in 30-8-120(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(c) The local law of the securities intermediary's jurisdiction as specified in 30-8-120(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(d) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(2) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(a) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of chapters 1 through 9 or this part, that jurisdiction is the commodity intermediary's jurisdiction.

(b) If subsection (2)(a) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(c) If subsection (2)(a) or (2)(b) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(d) If none of the preceding subsections applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(e) If none of the preceding subsections applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(3) The local law of the jurisdiction in which the debtor is located governs:

(a) perfection of a security interest in investment property by filing;

(b) automatic perfection of a security interest in investment property granted by a broker or securities intermediary; and

(c) automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary.

History: En. Sec. 24, Ch. 305, L. 1999.

30-9-326. *(Effective July 1, 2001)* **Law governing perfection and priority of security interests in letter-of-credit rights.** (1) Subject to subsection (3), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(2) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in 30-5-136.

(3) This section does not apply to a security interest that is perfected only under 30-9-328(4).

History: En. Sec. 25, Ch. 305, L. 1999.

30-9-327. *(Effective July 1, 2001)* **Location of debtor.** (1) In this section, "place of business" means a place where a debtor conducts its affairs.

(2) Except as otherwise provided in this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(3) (a) Subsection (2) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (2) does not apply, the debtor is located in the District of Columbia.

(4) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (2) and (3).

(5) A registered organization that is organized under the law of a state is located in that state.

(6) Except as otherwise provided in subsection (9), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is a registered organization and is not organized under the law of the United States or a state are located:

(a) in the state that the law of the United States designates, if the law designates a state of location;

(b) in the state that the registered organization designates, if the law of the United States authorizes the registered organization to designate its state of location; or

(c) in the District of Columbia, if subsection (6)(a) or (6)(b) does not apply.

(7) A registered organization continues to be located in the jurisdiction specified by subsection (5) or (6) notwithstanding:

(a) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(b) the dissolution, winding up, or cancellation of the existence of the registered organization.

(8) The United States is located in the District of Columbia.

(9) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(10) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(11) This section applies only for purposes of this part.

History: En. Sec. 26, Ch. 305, L. 1999.

30-9-328. *(Effective July 1, 2001)* **When security interest or agricultural lien is perfected — continuity of perfection.** (1) Except as otherwise provided in 30-9-329 and this section, a security interest is perfected if it has attached and all of the applicable requirements for perfection in 30-9-330 through 30-9-336 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(2) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in 30-9-330 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(3) A security interest or agricultural lien is perfected continuously if it is originally perfected in one manner under this chapter and is later perfected in another manner under this chapter, without an intermediate period when it was unperfected.

(4) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(5) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(6) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(7) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

History: En. Sec. 27, Ch. 305, L. 1999.

30-9-329. *(Effective July 1, 2001)* **Security interest perfected on attachment.** The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in 30-9-331(2) with respect to consumer goods that are subject to a statute or treaty described in 30-9-331(1);

(2) an assignment of accounts or payment intangibles that does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

(5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health care goods or services;

(6) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), until the debtor obtains possession of the collateral;

(7) a security interest of a collecting bank arising under 30-4-208;

(8) a security interest of an issuer or nominated person arising under 30-5-118;

(9) a security interest arising in the purchase or delivery of a financial asset under 30-9-216(3);

(10) a security interest in investment property created by a broker or securities intermediary;

(11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) a security interest created by an assignment of a beneficial interest in a decedent's estate.

History: En. Sec. 28, Ch. 305, L. 1999.

30-9-330. *(Effective July 1, 2001)* **When filing required to perfect security interest or agricultural lien — security interests and agricultural liens to which filing provisions do not apply.** (1) Except as otherwise provided in 30-9-332(2) or subsection (2) of this section, a financing statement must be filed to perfect all security interests and agricultural liens.

(2) The filing of a financing statement is not necessary to perfect a security interest:

(a) that is perfected under 30-9-328(4), (5), (6), or (7);

(b) that is perfected under 30-9-329 when it attaches;

(c) in property subject to a statute, regulation, or treaty described in 30-9-331(1);

(d) in goods in possession of a bailee that is perfected under 30-9-332(4)(a) or (4)(b);

(e) in certificated securities, documents, goods, or instruments that is perfected without filing or possession under 30-9-332(5), (6), or (7);

(f) in collateral in the secured party's possession under 30-9-333;

(g) in a certificated security that is perfected by delivery of the security certificate to the secured party under 30-9-333;

(h) in a deposit account, electronic chattel paper, investment property, or letter-of-credit right that is perfected by control under 30-9-334;

(i) in proceeds which is perfected under 30-9-335; or

(j) that is perfected under 30-9-336.

(3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

History: En. Sec. 29, Ch. 305, L. 1999.

30-9-331. *(Effective July 1, 2001)* **Perfection of security interests in property subject to certain statutes, regulations and treaties.** (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt 30-9-330(1);

(b) the certificate of ownership provisions of Title 23 or Title 61; or

(c) a certificate of title statute of another jurisdiction that provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in 30-9-333 and 30-9-336(4) and (5) and subsection (4) of this section for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in 30-9-336(4) and (5) and subsection (4) of this section, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) are governed by the statute, regulation, or treaty. In other respects the security interest is subject to this chapter.

(4) During any period in which collateral is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

History: En. Sec. 30, Ch. 305, L. 1999.

30-9-332. *(Effective July 1, 2001)* **Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money — perfection by permissive filing — temporary perfection without filing or transfer of possession.** (1) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(2) Except as otherwise provided in 30-9-335(3) and (4) for proceeds:

(a) a security interest in a deposit account may be perfected only by control under 30-9-334;

(b) a security interest in a letter-of-credit right may be perfected only by control under 30-9-334, except as otherwise provided in 30-9-328(4); and

(c) a security interest in money may be perfected only by the secured party's taking possession under 30-9-333.

(3) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(a) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(b) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(4) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(a) issuance of a document in the name of the secured party;

(b) the bailee's receipt of notification of the secured party's interest; or

(c) filing as to the goods.

(5) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(6) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(a) ultimate sale or exchange; or

(b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(7) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(a) ultimate sale or exchange; or

(b) presentation, collection, enforcement, renewal, or registration of transfer.

(8) After the 20-day period specified in subsection (5), (6), or (7) expires, perfection depends upon compliance with this chapter.

History: En. Sec. 31, Ch. 305, L. 1999.

30-9-333. *(Effective July 1, 2001)* **When possession by or delivery to secured party perfects security interest without filing.** (1) Except as otherwise provided in subsection (2), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under 30-8-331.

(2) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in 30-9-336(4).

(3) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business when:

(a) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(b) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(4) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(5) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under 30-8-331 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(6) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(7) If a person acknowledges that it holds possession for the secured party's benefit:

(a) the acknowledgment is effective under 30-8-331(1) or subsection (3) of this section, even if the acknowledgment violates the rights of a debtor; and

(b) unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(8) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(a) to hold possession of the collateral for the secured party's benefit; or

(b) to redeliver the collateral to the secured party.

(9) A secured party does not relinquish possession even if a delivery under subsection (8) violates the rights of a debtor. A person to which collateral is delivered under subsection (8) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides.

History: En. Sec. 32, Ch. 305, L. 1999.

30-9-334. *(Effective July 1, 2001)* **Perfection by control.** (1) A security interest in investment property, a deposit account, a letter-of-credit right, or electronic chattel paper may be perfected by control of the collateral under 30-9-124, 30-9-125, 30-9-126, or 30-9-127.

(2) A security interest in a deposit account, electronic chattel paper, or a letter-of-credit right is perfected by control under 30-9-124, 30-9-125, or 30-9-127 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(3) A security interest in investment property is perfected by control under 30-9-126 from the time the secured party obtains control and remains perfected by control until:

(a) the secured party does not have control; and

(b) one of the following occurs:

(i) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(ii) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

History: En. Sec. 33, Ch. 305, L. 1999.

30-9-335. *(Effective July 1, 2001)* **Secured party's rights on disposition of collateral and in proceeds.** (1) Except as otherwise provided in 30-2-403(2) and this chapter:

(a) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(b) a security interest attaches to any identifiable proceeds of collateral.

(2) Proceeds that are commingled with other property are identifiable proceeds:

(a) if the proceeds are goods, to the extent provided by 30-9-356; and

(b) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this chapter with respect to commingled property of the type involved.

(3) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(4) A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(a) the following conditions are satisfied:

(i) a filed financing statement covers the original collateral;

(ii) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(iii) the proceeds are not acquired with cash proceeds;

(b) the proceeds are identifiable cash proceeds; or

(c) the security interest in the proceeds is perfected when the security interest attaches to the proceeds or within 20 days thereafter.

(5) If a filed financing statement covers the original collateral, a security interest in proceeds that remains perfected under subsection (4)(a) becomes unperfected at the later of:

(a) when the effectiveness of the filed financing statement lapses under 30-9-535 or is terminated under 30-9-533; or

(b) the 21st day after the security interest attaches to the proceeds.

History: En. Sec. 34, Ch. 305, L. 1999.

30-9-336. *(Effective July 1, 2001)* **Continued perfection of security interest following change in applicable law.** (1) A security interest perfected pursuant to the law of the jurisdiction designated in 30-9-321(1) or 30-9-325(3) remains perfected until the earliest of:

(a) the time perfection would have ceased under the law of that jurisdiction;

(b) the expiration of 4 months after a change of the debtor's location to another jurisdiction;

(c) the expiration of 1 year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction; or

(d) the expiration of 1 year after a new debtor located in another jurisdiction becomes bound under 30-9-213(4).

(2) If a security interest described in subsection (1) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(3) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(a) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(b) thereafter the collateral is brought into another jurisdiction; and

(c) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(4) Except as otherwise provided in subsection (5), a security interest in goods covered by a certificate of title that is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(5) A security interest described in subsection (4) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable

requirements for perfection under 30-9-331(2) or 30-9-333 are not satisfied before the earlier of:

(a) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(b) the expiration of 4 months after the goods had become so covered.

(6) A security interest in a deposit account, letter-of-credit right, or investment property that is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(a) the time perfection would have ceased under the law of the first jurisdiction; or

(b) the expiration of 4 months after a change of the applicable jurisdiction.

(7) If a security interest described in subsection (6) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

History: En. Sec. 35, Ch. 305, L. 1999.

30-9-337. *(Effective July 1, 2001)* **Interests that take priority over or take free of unperfected security interest or agricultural lien.** (1) An unperfected security interest or agricultural lien is subordinate to the rights of:

(a) a person entitled to priority under 30-9-342; and

(b) a person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected or a financing statement covering the collateral is filed.

(2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(3) Except as otherwise provided in subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(4) A licensee of a general intangible or a buyer, other than a secured party, of accounts, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(5) Except as otherwise provided in 30-9-340 and 30-9-341, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing.

History: En. Sec. 36, Ch. 305, L. 1999.

30-9-338. *(Effective July 1, 2001)* **No interest retained in right to payment that is sold — rights and title of seller of account or chattel paper with respect to creditors and purchasers.** (1) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(2) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor has rights and title to the account or chattel paper identical to those the debtor sold.

History: En. Sec. 37, Ch. 305, L. 1999.

30-9-339. *(Effective July 1, 2001)* **Rights and title of consignee with respect to creditors and purchasers.** (1) Except as otherwise provided in subsection (2), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee has rights and title to the goods identical to those the consignor had or had power to transfer.

(2) For purposes of determining the rights of a creditor of a consignee, law other than this chapter determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

History: En. Sec. 38, Ch. 305, L. 1999.

30-9-340. *(Effective July 1, 2001)* **Buyer of goods.** (1) Except as otherwise provided in subsection (5), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(2) Except as otherwise provided in subsection (5), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(a) without knowledge of the security interest;

(b) for value;

(c) primarily for the buyer's personal, family, or household purposes; and

(d) before the filing of a financing statement covering the goods.

(3) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (2), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by 30-9-336(1) and (2).

(4) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(5) Subsections (1) and (2) do not affect a security interest in goods in the possession of the secured party under 30-9-333.

History: En. Sec. 39, Ch. 305, L. 1999.

30-9-341. *(Effective July 1, 2001)* **Licensee of general intangible and lessee of goods in ordinary course of business.** (1) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in ordinary course of business if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(2) A licensee of a general intangible in ordinary course of business takes its rights under the license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(3) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

History: En. Sec. 40, Ch. 305, L. 1999.

30-9-342. *(Effective July 1, 2001)* **Priorities among conflicting security interests and agricultural liens in same collateral.** (1) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(a) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected if there is no period thereafter when there is neither filing nor perfection.

(b) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(c) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(2) For the purposes of subsection (1)(a):

(a) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(b) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(3) Except as otherwise provided in subsection (6), a security interest in collateral that qualifies for priority over a conflicting security interest under 30-9-347, 30-9-348, 30-9-349, 30-9-350, or 30-9-351 also has priority over a conflicting security interest in:

(a) any supporting obligation for the collateral; and

(b) proceeds of the collateral if:

(i) the security interest in proceeds is perfected;

(ii) the proceeds are:

(A) cash proceeds; or

(B) of the same type as the collateral; and

(iii) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(4) Subject to subsection (5) and except as otherwise provided in subsection (6), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(5) Subsection (4) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(6) Subsections (1) through (5) are subject to:

(a) subsection (7) and the other provisions of this part;

(b) 30-4-208 with respect to a security interest of a collecting bank;

(c) 30-5-118 with respect to a security interest of an issuer or nominated person; and

(d) 30-9-130 with respect to a security interest arising under chapter 2 or 2A.

(7) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

History: En. Sec. 41, Ch. 305, L. 1999.

30-9-343. *(Effective July 1, 2001)* **Future advances.** (1) Except as otherwise provided in subsection (3), for purposes of determining the priority of a perfected security interest under 30-9-342(1)(a), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(a) is made while the security interest is perfected only:

(i) under 30-9-329 when it attaches; or

(ii) temporarily under 30-9-332(5), (6), or (7); and

(b) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under 30-9-329 or 30-9-332(5), (6), or (7).

(2) Except as otherwise provided in subsection (3), a security interest is subordinate to the rights of a person that becomes a lien creditor while the security interest is perfected only to the extent that it secures advances made more than 45 days after the person becomes a lien creditor unless the advance is made:

(a) without knowledge of the lien; or

(b) pursuant to a commitment entered into without knowledge of the lien.

(3) Subsections (1) and (2) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(4) Except as otherwise provided in subsection (5), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(a) the time the secured party acquires knowledge of the buyer's purchase; or

(b) 45 days after the purchase.

(5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(6) Except as otherwise provided in subsection (7), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(a) the time the secured party acquires knowledge of the lease; or

(b) 45 days after the lease contract becomes enforceable.

(7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

History: En. Sec. 42, Ch. 305, L. 1999.

30-9-344. *(Effective July 1, 2001)* **Priority of purchase-money security interests.** (1) Except as otherwise provided in subsection (7), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and except as otherwise provided in 30-9-347, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(2) Subject to subsection (3) and except as otherwise provided in subsection (7), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper if so provided in 30-9-350, and except

as otherwise provided in 30-9-347, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(a) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(b) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(c) the holder of the conflicting security interest receives the notification within 5 years before the debtor receives possession of the inventory; and

(d) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(3) Subsections (2)(b) through (2)(d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(a) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(b) if the purchase-money security interest is temporarily perfected without filing or possession under 30-9-332(6), before the beginning of the 20-day period thereunder.

(4) Subject to subsection (5) and except as otherwise provided in subsection (7), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and except as otherwise provided in 30-9-347, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(a) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(b) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(c) the holder of the conflicting security interest receives the notification within 6 months before the debtor receives possession of the livestock; and

(d) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(5) Subsections (4)(b) through (4)(d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(a) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(b) if the purchase-money security interest is temporarily perfected without filing or possession under 30-9-332(6), before the beginning of the 20-day period thereunder.

(6) Except as otherwise provided in subsection (7), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and except as otherwise provided in 30-9-347, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(7) If more than one security interest qualifies for priority in the same collateral under subsection (1), (2), (4), or (6):

(a) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(b) in all other cases, 30-9-342(1) applies to the qualifying security interests.

History: En. Sec. 43, Ch. 305, L. 1999.

30-9-345. *(Effective July 1, 2001)* **Priority of security interests in transferred collateral.** (1) Except as otherwise provided in subsection (2), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(a) the debtor acquired the collateral subject to the security interest created by the other person;

(b) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(c) there is no period thereafter when the security interest is unperfected.

(2) Subsection (1) subordinates a security interest only if the security interest:

(a) otherwise would have priority solely under 30-9-342(1) or 30-9-344; or

(b) arose solely under 30-2-711(3) or 30-2A-508(5).

History: En. Sec. 44, Ch. 305, L. 1999.

30-9-346. *(Effective July 1, 2001)* **Priority of security interests created by new debtor.** (1) Subject to subsection (2), a security interest created by a new debtor that is perfected by a filed financing statement that is effective solely under 30-9-528 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral that is perfected by another method.

(2) If more than one security interest in the same collateral is subordinate under subsection (1), the other provisions of this part, as applicable, determine the priority among the subordinated security interests.

History: En. Sec. 45, Ch. 305, L. 1999.

30-9-347. *(Effective July 1, 2001)* **Priority of security interests in deposit account.** The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under 30-9-124 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in subsections (3) and (4), security interests perfected by control under 30-9-334 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in subsection (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under 30-9-124(1)(c) has priority over a security interest held by the bank with which the deposit account is maintained.

History: En. Sec. 46, Ch. 305, L. 1999.

30-9-348. *(Effective July 1, 2001)* **Priority of security interests in investment property.** The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under 30-9-126 has priority over a security interest of a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subsections (3) and (4), conflicting security interests held by secured parties each of which has control under 30-9-126 rank according to priority in time of:

(a) if the collateral is a security, obtaining control;

(b) if the collateral is a security entitlement carried in a securities account and:

(i) if the secured party obtained control under 30-8-116(4)(a), the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under 30-8-116(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under 30-8-116(4)(c), the time on which priority would be based under this subsection if the other person were the secured party; or

(c) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in 30-9-126(2)(b) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form that is perfected by taking delivery under 30-9-333(1) and not by control under 30-9-334 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests granted by a broker, securities intermediary, or commodity intermediary that are perfected without control under 30-9-126 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by 30-9-342 and 30-9-343.

History: En. Sec. 47, Ch. 305, L. 1999.

30-9-349. *(Effective July 1, 2001)* **Priority of security interests in letter-of-credit right.** The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under 30-9-127 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under 30-9-334 rank according to priority in time of obtaining control.

History: En. Sec. 48, Ch. 305, L. 1999.

30-9-350. *(Effective July 1, 2001)* **Purchase of chattel paper or instrument.** (1) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest if:

(a) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under 30-9-125; and

(b) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(2) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under 30-9-125 in good faith,

in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(3) Except as otherwise provided in 30-9-347, a purchaser having priority in chattel paper under subsection (1) or (2) also has priority in proceeds of the chattel paper to the extent that:

(a) 30-9-342 provides for priority in the proceeds; or

(b) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(4) Except as otherwise provided in 30-9-351(1), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(5) For purposes of subsections (1) and (2), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(6) For purposes of subsections (2) and (4), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

History: En. Sec. 49, Ch. 305, L. 1999.

30-9-351. *(Effective July 1, 2001)* **Priority of rights of purchasers of instruments, documents, and securities under other chapters — priority of interests in financial assets and security entitlements under chapter 8.** (1) This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to whom a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in chapters 3, 7, and 8.

(2) This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim under chapter 8.

(3) Filing under this chapter does not constitute notice of a claim or defense to the holders, purchasers, or persons mentioned in subsections (1) and (2).

History: En. Sec. 50, Ch. 305, L. 1999.

30-9-352. *(Effective July 1, 2001)* **Transfer of money — transfer of funds from deposit account.** (1) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(2) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

History: En. Sec. 51, Ch. 305, L. 1999.

30-9-353. *(Effective July 1, 2001)* **Priority of certain liens arising by operation of law.** (1) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(a) that secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(b) that is created by statute or rule of law in favor of the person; and

(c) whose effectiveness depends on the person's possession of the goods.

(2) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

History: En. Sec. 52, Ch. 305, L. 1999.

30-9-354. *(Effective July 1, 2001)* **Priority of security interests in fixtures and crops.** (1) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.

(2) This chapter does not prevent creation of an encumbrance upon fixtures under real property law.

(3) In cases not governed by subsections (4) through (8), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property that is not the debtor.

(4) Except as otherwise provided in subsection (8), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(a) the security interest is a purchase-money security interest;

(b) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(c) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(5) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(ii) the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(b) before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:

(i) factory or office machines;

(ii) equipment that is not primarily used or leased for use in the operation of the real property; or

(iii) replacements of domestic appliances that are consumer goods;

(c) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter; or

(d) the security interest is:

(i) created in a manufactured home in a manufactured-home transaction; and

(ii) perfected pursuant to a statute described in 30-9-331(1)(b).

(6) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner.

(7) The priority of the security interest under subsection (6) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(8) A mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land, including the

acquisition cost of the land, if the recorded record so indicates. Except as otherwise provided in subsections (5) and (6), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(9) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(10) Subsection (9) prevails over any inconsistent provisions of Title 71, chapter 3, parts 8 and 9.

History: En. Sec. 53, Ch. 305, L. 1999.

30-9-355. *(Effective July 1, 2001)* **Accessions.** (1) A security interest may be created in an accession and continues in collateral that becomes an accession.

(2) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(3) Except as otherwise provided in subsection (4), the other provisions of this part determine the priority of a security interest in an accession.

(4) A security interest in an accession is subordinate to a security interest in the whole that is perfected by compliance with the requirements of a certificate-of-title statute under 30-9-331(2).

(5) After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(6) A secured party that removes an accession from other goods under subsection (5) shall promptly reimburse any encumbrancer or owner of the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

History: En. Sec. 54, Ch. 305, L. 1999.

30-9-356. *(Effective July 1, 2001)* **Commingled goods.** (1) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(2) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(3) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(4) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (3) is perfected.

(5) Except as otherwise provided in subsection (6), the other provisions of this part, as applicable, determine the priority of a security interest that attaches to the product or mass under subsection (3).

(6) If more than one security interest attaches to the product or mass under subsection (3), the following rules determine priority:

(a) A security interest that is perfected under subsection (4) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(b) If more than one security interest is perfected under subsection (4), the security interests rank equally in proportion to value of the collateral at the time it became commingled goods.

History: En. Sec. 55, Ch. 305, L. 1999.

30-9-357. *(Effective July 1, 2001)* **Priority of security interests in goods covered by certificate of title.** If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person that is in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under 30-9-331(2), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

History: En. Sec. 56, Ch. 305, L. 1999.

30-9-358. *(Effective July 1, 2001)* **Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.** If a security interest or agricultural lien is perfected by a filed financing statement providing information described in 30-9-536(2)(e) that is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

History: En. Sec. 57, Ch. 305, L. 1999.

30-9-359. *(Effective July 1, 2001)* **Priority subject to subordination.** This chapter does not preclude subordination by agreement by a person entitled to priority.

History: En. Sec. 58, Ch. 305, L. 1999.

30-9-360. *(Effective July 1, 2001)* **Effectiveness of right of recoupment or setoff against deposit account.** (1) Except as otherwise provided in subsection (3), a bank with which a deposit account is maintained may exercise against a secured party that holds a security interest in the deposit account any right of recoupment or setoff.

(2) Except as otherwise provided in subsection (3), the application of this chapter to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

(3) The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account that is perfected by control under 30-9-124(1)(c) if the setoff is based on a claim against the debtor.

History: En. Sec. 59, Ch. 305, L. 1999.

30-9-361. *(Effective July 1, 2001)* **Bank's rights and duties with respect to deposit account.** Except as otherwise provided in 30-9-360(3) and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) the creation, attachment, or perfection of a security interest in the deposit account;

(2) the bank's knowledge of the security interest; or

(3) the bank's receipt of instructions from the secured party.

History: En. Sec. 60, Ch. 305, L. 1999.

30-9-362. *(Effective July 1, 2001)* **Bank's right to refuse to enter into or disclose existence of control agreement.** This chapter does not require a bank to enter into an agreement of the type described in 30-9-124(1)(b), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

History: En. Sec. 61, Ch. 305, L. 1999.

Part 4

Rights of Third Parties

30-9-401. *(Temporary)* **Place of filing — erroneous filing — removal of collateral.** (1) Except for financing statements filed pursuant to 30-9-409, the proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept;

(b) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in 30-9-103 determine whether filing is necessary in this state.

(5) For the purposes of this section, the residence of an organization is its place of business, if it has one, or its chief executive office if it has more than one place of business. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-401, Ch. 264, L. 1963; amd. Sec. 15, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-401; amd. Sec. 73, Ch. 402, L. 1983; amd. Sec. 1, Ch. 683, L. 1985.

Cross-References

GENERAL

Fees of County Clerk, 7-4-2631.

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

Protection of buyers of goods, 30-9-307.

Priority of security interests in fixtures, 30-9-313.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer, 30-9-403.

Motor vehicles — conditional sales contracts, 61-3-103.

Filing of agricultural lien statements, 71-3-125.

DEFINITIONAL

Account, 30-9-106.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Debtor, 30-9-105.
Equipment, 30-9-109.
Farm products, 30-9-109.
Financing statement, 30-9-402.
Fixture filing, 30-9-313.
Good faith, 30-1-201.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.

30-9-402. *(Temporary)* **Formal requisites of financing statement — amendments — mortgage as financing statement.** (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address and the county of residence of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. If the financing statement covers timber to be cut, minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or farm products or if the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances.

(b) proceeds under 30-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(c) collateral as to which the filing has lapsed, if within 5 years of the lapse; or

(d) collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) ....
Social security number or tax identification number ....
Address ....
Name of secured party (or assignee) ....
Address ....

1. This financing statement covers the following types (or items) of property: (Describe)

2. (If collateral is crops, livestock, or unmanufactured agricultural products) The above described crops, livestock, or unmanufactured agricultural products are

growing, being raised, or being produced or are to be grown, raised, or produced on:

(Describe Real Estate and County Where Located)

3. (If applicable) The above goods are to become fixtures on:

(Describe Real Estate) ....

and this financing statement is to be filed in the real estate record. (If the debtor does not have an interest or record) The name of a record owner is

....

4. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever Signature of Debtor (or Assignor) ....
is applicable) Signature of Secured Party (or Assignee) ....

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) (a) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or a financing statement filed as a fixture filing (30-9-313) when the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(b) A financing statement covering farm products must contain a reasonable description of the real estate upon which the farm products are produced or located. A legal description of the real estate is not required; a statement naming the county or counties in which the farm products are produced or located is sufficient to satisfy this subsection (b).

(6) (a) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

(i) the goods are described in the mortgage by item or type;

(ii) the goods are or are to become fixtures related to the real estate described in the mortgage;

(iii) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(iv) the mortgage is duly recorded.

(b) No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the social security number or tax identification number of the debtor and the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. If the debtor so changes the debtor's name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-402, Ch. 264, L. 1963; amd. Sec. 1, Ch. 272, L. 1967; R.C.M. 1947, 87A-9-402; amd. Sec. 74, Ch. 402, L. 1983; amd. Sec. 1, Ch. 619, L. 1987; amd. Sec. 1, Ch. 304, L. 1989; amd. Sec. 2, Ch. 326, L. 1989; amd. Sec. 1, Ch. 335, L. 1993.

Cross-References

GENERAL

Perfection of security interests in multiple state jurisdictions, 30-9-103.

Sufficiency of description, 30-9-110.

Request for statement of account or list of collateral, 30-9-208.

Alienability of debtor's rights — judicial process, 30-9-311.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer, 30-9-403.

Mortgage a special lien — on what a lien, 71-1-103.

Recording of mortgages and assignments, 71-1-207.

Trust indenture considered to be mortgage on real property, 71-1-305.

Filing of agricultural lien statements, 71-3-125.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Fixture, 30-9-313.
Fixture filing, 30-9-313.
Goods, 30-9-105.
Party, 30-1-201.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.

30-9-403. *(Temporary)* **What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system.** (1) (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of 30-9-402 and subsection (1)(a) of this section. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(c) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(2) Except as provided in subsection (6), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until 60 days after termination of the insolvency proceedings or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing

was effective, after which it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to the lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if the filing officer has retained a microfilm or other photographic record or a record produced according to rules adopted by the secretary of state or, in other cases after 1 year after the lapse, upon approval by the local government records destruction subcommittee provided for in 2-6-403. The filing officer shall arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if the filing officer physically destroys the financing statements of a period more than 5 years past, those that have been continued by a continuation statement or that are still effective under subsection (6) must be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing. The filing officer shall hold the statement or a microfilm or other photographic copy or a copy produced according to rules adopted by the secretary of state for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing must be set pursuant to subsection (12).

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee under the financing statement or, if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9).

(9) Within 1 working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that the secretary of state shall establish. The computer system must allow access to financing statement information by any type of communications that conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is

not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document that does not specifically indicate the county of the principal debtor's residence on its face.

(11) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(12) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit all fees in the enterprise fund in the state treasury. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-403, Ch. 264, L. 1963; amd. Sec. 2, Ch. 272, L. 1967; amd. Sec. 4, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-403; amd. Sec. 75, Ch. 402, L. 1983; amd. Sec. 2, Ch. 119, L. 1985; amd. Sec. 2, Ch. 683, L. 1985; amd. Sec. 2, Ch. 619, L. 1987; amd. Sec. 2, Ch. 185, L. 1989; amd. Sec. 1, Ch. 273, L. 1989; amd. Sec. 3, Ch. 351, L. 1989; amd. Sec. 3, Ch. 411, L. 1993; amd. Sec. 19, Ch. 420, L. 1993; amd. Sec. 1, Ch. 290, L. 1997.

Cross-References

GENERAL

Perfection of security interest in multiple state jurisdictions, 30-9-103.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Priorities among conflicting security interests in same collateral, 30-9-312.

Priority of security interests in fixtures, 30-9-313.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

Assignment of security interest — duties of filing officer — fees, 30-9-405.

Filing of agricultural lien statements, 71-3-125.

DEFINITIONAL

Debtor, 30-9-105.
Financing statement, 30-9-402.
Fixture, 30-9-313.
Fixture filing, 30-9-313.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-404. *(Temporary)* **Termination statement.** (1) If a financing statement covering consumer goods is filed on or after October 1, 1983, then within 1 month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases, whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with 30-9-405(2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection or to send such a termination statement within 10 days after proper demand therefor, he shall be liable to the debtor for $100, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement, he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party, stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record or a record produced according to rules adopted by the secretary of state of the financing statement and of any related continuation statement, statement of assignment, and statement of release, he may remove the originals from the files at any time after receipt of the termination statement. If he has no such record, he may remove them from the files at any time after 1 year after receipt of the termination statement.

(3) The uniform fee for filing and indexing the termination statement shall be set pursuant to 30-9-403. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-404, Ch. 264, L. 1963; amd. Sec. 3, Ch. 272, L. 1967; amd. Sec. 5, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-404; amd. Sec. 76, Ch. 402, L. 1983; amd. Sec. 3, Ch. 185, L. 1989.

Cross-References

GENERAL

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

DEFINITIONAL

Consumer goods, 30-9-109.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Person, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Value, 30-1-201.
Written, 30-1-201.

30-9-405. *(Temporary)* **Assignment of security interest — duties of filing officer — fees.** (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in 30-9-403(4). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be set pursuant to 30-9-403.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement, the name and address of the assignee, and except as provided in 30-9-409(2), containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement or in the case of a fixture filing or a filing covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), he shall index the assignment under the name of the assignor as grantor and to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee,

he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be set pursuant to 30-9-403. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (30-9-402(6)) may be made only by an assignment of the mortgage in the manner provided by 71-1-207.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-405, Ch. 264, L. 1963; amd. Sec. 4, Ch. 272, L. 1967; amd. Sec. 6, Ch. 185, L. 1971; amd. Sec. 16, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-405; amd. Sec. 77, Ch. 402, L. 1983.

Cross-References

GENERAL

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

Termination statement, 30-9-404.

Release of collateral — duties of filing officer — fees, 30-9-406.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Rights, 30-1-201.
Secured party, 30-9-105.
Signed, 30-1-201.
Written, 30-1-201.

30-9-406. *(Temporary)* **Release of collateral — duties of filing officer — fees.** A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released (except as provided in 30-9-409(2)), the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be set pursuant to 30-9-403. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-406, Ch. 264, L. 1963; amd. Sec. 5, Ch. 272, L. 1967; amd. Sec. 7, Ch. 185, L. 1971; amd. Sec. 17, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-406; amd. Sec. 78, Ch. 402, L. 1983.

Cross-References

GENERAL

Termination statement, 30-9-404.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Secured party, 30-9-105.
Signed, 30-1-201.

30-9-407. *(Temporary)* **Information from filing officer.** (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy of the statement, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to the person.

(2) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file on the date and hour stated in the certificate, any presently effective financing statement naming a particular debtor and any statement of assignment and, if there is, giving the date and hour of filing of each statement and the name and address of each secured party in the statement. For

financing statements recorded on the system described in 30-9-403(9), the filing officer shall, upon request of any person, also furnish written information concerning the collateral described for any presently effective financing statement covering collateral described in 30-9-403(8). However, the information is not a part of the filing officer's certificate and may not constitute a complete description of the collateral covered by the financing statement. The uniform fee for a certificate and description of collateral must be set pursuant to 30-9-403. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

(3) A computer printout from the system described in 30-9-403(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated on the printout, a financing statement covering the collateral described in 30-9-403(8). The fee for requesting a printout from the secretary of state must cover the cost of the printout. If a certificate is made on a requestor's own computer using telephone dial-up access, a fee commensurate with costs must be charged.

(4) The secretary of state shall ensure that the system described in 30-9-403(9) complies with the requirements for a central filing system as defined by 7 U.S.C. 1631 as that statute read on January 1, 1987. The secretary of state shall distribute portions of the master list to registered buyers at least once each month. The secretary of state may distribute portions of the master list more frequently if the secretary of state determines it is necessary to improve the flow of agricultural credit. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-407, Ch. 264, L. 1963; amd. Sec. 8, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-407; amd. Sec. 79, Ch. 402, L. 1983; amd. Sec. 3, Ch. 683, L. 1985; amd. Sec. 3, Ch. 619, L. 1987; amd. Sec. 2, Ch. 335, L. 1993; amd. Sec. 20, Ch. 420, L. 1993.

Cross-References

GENERAL

Fees of County Clerk, 7-4-2631.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer, 30-9-403.

DEFINITIONAL

Debtor, 30-9-105.

Financing statement, 30-9-402.

Person, 30-1-201.

Secured party, 30-9-105.

Send, 30-1-201.

30-9-408. Repealed. Sec. 85, Ch. 402, L. 1983.

History: En. Sec. 1, Ch. 76, L. 1965; amd. Sec. 1, Ch. 279, L. 1967; R.C.M. 1947, 87A-9-302.1(a).

30-9-409. *(Temporary)* **Utility financing statement — place of filing — contents — perfection of security interest.** (1) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state.

(2) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required.

(3) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20(c) of the Interstate Commerce Act or by filing a financing statement pursuant to subsection (1). *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 2, Ch. 76, L. 1965; amd. Sec. 2, Ch. 279, L. 1967; amd. Sec. 14, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-302.2.

Cross-References

When filing required to perfect security interest — security interests to which filing provisions of chapter do not apply, 30-9-302.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

30-9-410. *(Temporary)* **Continued applicability of laws to transmitting utilities.** Unless displaced by the specific provisions of 30-9-409, this code and other applicable laws remain in full force and effect and supplement the provisions of 30-9-409. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 3, Ch. 76, L. 1965; R.C.M. 1947, 87A-9-302.3; amd. Sec. 1, Ch. 101, L. 1985.

30-9-411. *(Temporary)* **Security agreements and termination statements — when destroyed.** Termination statements filed under this chapter shall be retained by the filing officer for a period of 8 years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by this chapter and as to which no termination statement has been filed, shall be retained by the filing officer for a period of 8 years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. 59-516.1 by Sec. 11-144, Ch. 264, L. 1963; R.C.M. 1947, 59-516.1.

Cross-References

Termination statement, 30-9-404.

Assignment of security interest — duties of filing officer — fees, 30-9-405.

30-9-412. *(Temporary)* **Financing statements covering consigned or leased goods.** A consignor or lessor of goods may file a financing statement using the terms "consignor", "consignee", "lessor", "lessee", or the like instead of the terms specified in 30-9-402. The provisions of this part shall be applied as appropriate to such a financing statement, but its filing may not of itself be a factor in determining whether or not the consignment or lease is intended as security (30-1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor that attaches to the consigned or leased goods is perfected by such filing. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 80, Ch. 402, L. 1983.

30-9-413 through 30-9-420 reserved.

30-9-421. *(Temporary)* **Rules for agricultural lien filing — duties — perfection and priority rights.** (1) The secretary of state may adopt rules concerning the operation of the central agricultural security interest computer filing system, prescribing such matters as format for data and the type of information to be recorded from the financing statement.

(2) A financing statement covering the collateral described in 30-9-403(8) which was filed with a county clerk and recorder prior to July 1, 1985, and which was sufficient on that date to perfect a security interest in the collateral described therein retains its perfection and priority rights upon being centrally filed. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 4, Ch. 683, L. 1985; amd. Sec. 4, Ch. 619, L. 1987.

Cross-References

GENERAL

Perfection of security interest in multiple state jurisdictions, 30-9-103.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Priorities among conflicting security interests in same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

Assignment of security interest — duties of filing officer — fees, 30-9-405. Filing of agricultural lien statements, 71-3-125.

30-9-422. Repealed. Sec. 5, Ch. 619, L. 1987.
History: En. Sec. 5, Ch. 683, L. 1985.

30-9-423. *(Temporary)* **Filing provisions not to affect department authority as to branded livestock.** Nothing contained in 30-9-403 may be construed to limit the authority of the department of livestock to accept and file notices of security agreements covering branded livestock. All liens on any livestock bearing a recorded brand must be filed with the department of livestock as provided for in 81-8-301. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*
History: En. Sec. 7, Ch. 683, L. 1985.

30-9-424 through 30-9-430 reserved.

30-9-431. *(Temporary)* **Filing of a facsimile copy.** (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*
History: En. Sec. 4, Ch. 273, L. 1989; amd. Sec. 2, Ch. 290, L. 1997.

30-9-432. Removal of improper or fraudulent liens. (1) If a filing officer receives a complaint or has reason to believe that a lien submitted or filed with the filing officer's office is improper or fraudulent, the filing officer may reject the submission or remove the filing from existing files after giving notice and an opportunity to respond to the secured party.

(2) A person adversely affected by a lien that is determined to be improper or fraudulent by the filing officer may recover treble damages from the person responsible for submitting the lien.
History: En. Sec. 4, Ch. 335, L. 1993.

30-9-433 through 30-9-440 reserved.

30-9-441. *(Effective July 1, 2001)* **Alienability of debtor's rights.** (1) Except as otherwise provided in 30-9-446 through 30-9-449 and subsection (2) of this section, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by applicable law other than this chapter.

(2) An agreement between the debtor and secured party that prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.
History: En. Sec. 62, Ch. 305, L. 1999.

30-9-442. *(Effective July 1, 2001)* **Secured party not obligated on contract of debtor.** The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not impose upon a secured party liability in contract or tort for the debtor's acts or omissions.
History: En. Sec. 63, Ch. 305, L. 1999.

30-9-443. *(Effective July 1, 2001)* **Agreement not to assert defense against assignee.** (1) In this section, "value" has the meaning provided in 30-3-303(1).

(2) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(a) for value;

(b) in good faith;

(c) without notice of a claim of a property or possessory right to the property assigned; and

(d) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under 30-3-305(1).

(3) Subsection (2) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under 30-3-305(2).

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record provide a statement to the effect that the rights of an assignee are subject to claims or defenses that the consumer debtor could assert against the original obligee, and the record does not provide such a statement:

(a) the record has the same effect as if the record provided such a statement; and

(b) the account debtor may assert against an assignee those claims and defenses that would have been available if the record provided such a statement.

(5) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(6) Except as otherwise provided in subsection (4), this section does not displace law other than this chapter that gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

History: En. Sec. 64, Ch. 305, L. 1999.

30-9-444. *(Effective July 1, 2001)* **Rights acquired by assignee — claim and defenses against assignee.** (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (2) through (5), the rights of an assignee are subject to:

(a) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(b) any other defense or claim of the account debtor against the assignor that accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(2) Subject to subsection (3) and except as otherwise provided in subsection (4), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (1) only to reduce the amount the account debtor owes.

(3) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record provide a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not provide such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record provided such a statement.

(5) This section does not apply to an assignment of a health-care-insurance receivable.

History: En. Sec. 65, Ch. 305, L. 1999.

30-9-445. *(Effective July 1, 2001)* **Modification of assigned contract.** (1) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (2) through (4).

(2) Subsection (1) applies to the extent that:

(a) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(b) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under 30-9-446(1).

(3) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(4) This section does not apply to an assignment of a health-care-insurance receivable.

History: En. Sec. 66, Ch. 305, L. 1999.

30-9-446. *(Effective July 1, 2001)* **Discharge of account debtor — notification of assignment — identification and proof of assignment — term prohibiting assignment ineffective.** (1) Subject to subsections (2) through (8), an account debtor on an account, chattel paper, or payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(2) Subject to subsection (7), notification is ineffective under subsection (1):

(a) if it does not reasonably identify the rights assigned;

(b) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(c) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(i) only a portion of the account, chattel paper, or general intangible has been assigned to that assignee;

(ii) a portion has been assigned to another assignee; or

(iii) the account debtor knows that the assignment to that assignee is limited.

(3) Subject to subsection (7), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (1).

(4) Except as otherwise provided in 30-2A-303, 30-9-447, and subsection (5) of this section, and subject to subsection (7) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(a) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an account, chattel paper, payment intangible, or promissory note; or

(b) provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(5) Subsection (4) does not apply to the sale of a payment intangible or promissory note.

(6) Subject to subsection (7), an account debtor may not waive or vary its option under subsection (2)(c).

(7) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(8) This section does not apply to an assignment of a health-care-insurance receivable.

History: En. Sec. 67, Ch. 305, L. 1999.

30-9-447. *(Effective July 1, 2001)* **Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.** (1) Except as otherwise provided in subsection (2), a term in a lease agreement is ineffective to the extent that it:

(a) prohibits, restricts, or requires the consent of a party to the lease to the creation, attachment, perfection, or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(b) provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(2) Except as otherwise provided in 30-2A-303(7), a term described in subsection (1)(b) is effective to the extent that there is:

(a) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(b) a delegation of a material performance of either party to the lease contract in violation of the term.

(3) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within 30-2A-303(4). This subsection does not apply to the extent that enforcement results in a delegation of a material performance of the lessor.

History: En. Sec. 68, Ch. 305, L. 1999.

30-9-448. *(Effective July 1, 2001)* **Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.** (1) Except as otherwise provided in subsection (2), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and that prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible is ineffective to the extent that the term:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(3) A rule of law, including a provision in a statute or governmental rule or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of or creation of a security interest in a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law described in subsection (3) would be effective under law other than this chapter but is ineffective under subsection (1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(a) is not enforceable against the person obligated on the promissory note or the account debtor;

(b) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(c) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(d) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(e) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(f) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(5) This section prevails over any inconsistent provisions of other statutes or rules.

History: En. Sec. 69, Ch. 305, L. 1999.

30-9-449. *(Effective July 1, 2001)* **Restrictions on assignment of letter-of-credit rights ineffective.** (1) A term in a letter of credit or a rule of law, including a provision in a statute or governmental rule or regulation, custom, or practice applicable to the letter of credit that prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, custom, or practice:

(a) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(b) provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(2) To the extent that a term in a letter of credit is ineffective under subsection (1) but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(a) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(b) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(c) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

History: En. Sec. 70, Ch. 305, L. 1999.

Part 5

Filing

30-9-501. *(Temporary)* **Default — procedure when security agreement covers both real and personal property.** (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies, and duties provided in 30-9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement, and those provided in 30-9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (30-9-504(3) and 30-9-505) and with respect to redemption of collateral (30-9-506), but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) 30-9-502(2) and 30-9-504(2) insofar as they require accounting for surplus proceeds of collateral;

(b) 30-9-504(3) and 30-9-505(1), which deal with disposition of collateral;

(c) 30-9-505(2), which deals with acceptance of collateral as discharge of obligation;

(d) 30-9-506, which deals with redemption of collateral; and

(e) 30-9-507(1), which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment, the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-501; amd. Sec. 81, Ch. 402, L. 1983.

Cross-References

GENERAL

Duty of secured party, 25-13-506.

Purposes — rules of construction — variation by agreement, 30-1-102.

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Secured party's right to take possession after default, 30-9-503.

Defrauding creditors, 45-6-315.

DEFINITIONAL

Agreement, 30-1-201.
Collateral, 30-9-105.
Debtor, 30-9-105.
Documents, 30-9-105.
Goods, 30-9-105.
Remedy, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-502. *(Temporary)* **Collection rights of secured party.** (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under 30-9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-502; amd. Sec. 82, Ch. 402, L. 1983.

Cross-References

GENERAL

Duty of secured party, 25-13-506.

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Use or disposition of collateral without accounting permissible, 30-9-205.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

Secured party's liability for failure to comply with part, 30-9-507.

DEFINITIONAL

Account, 30-9-106.
Account debtor, 30-9-105.
Agreement, 30-1-201.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Debtor, 30-9-105.
Instrument, 30-9-105.
Notify, 30-1-201.
Proceeds, 30-9-306.

Secured party, 30-9-105.
Security agreement, 30-9-105.

30-9-503. *(Temporary)* **Secured party's right to take possession after default.** Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under 30-9-504. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-503.

Cross-References

GENERAL

Personal property subject to security interest, 25-13-505.

Duty of secured party, 25-13-506.

DEFINITIONAL

Action, 30-1-201.
Collateral, 30-9-105.
Debtor, 30-9-105.
Equipment, 30-9-109.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.

30-9-504. *(Temporary)* **Secured party's right to dispose of collateral after default — effect of disposition.** (1) A secured party after default may sell, lease, or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the chapter on sales (chapter 2). The proceeds of disposition shall be applied in the order following to:

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of account or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) (a) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall

be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale, and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(b) Notification by the secured party is reasonable under subsection (3)(a) and constitutes steps reasonably required to inform another in the ordinary course under 30-1-201(26) if it is sent by certified mail to the most recent address provided by the debtor or another secured party as follows:

(i) the address stated on the security agreement or other applicable loan document in the case of a debtor or on the written notice of claim in the case of another secured party; or

(ii) such other address of which the secured party receives notice in writing from the debtor or other secured party prior to the time notification is sent to the most recent address previously given under subsection (3)(b)(i) or this subsection (3)(b)(ii).

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders, or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement, or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-504; amd. Sec. 83, Ch. 402, L. 1983; amd. Sec. 1, Ch. 3, L. 1987.

Cross-References

GENERAL

Property subject to security interest — disposition of proceeds — security agreement, 25-13-712.

Seller's resale including contract for resale, 30-2-706.

Policy and subject matter of chapter, 30-9-102.

When collateral not owned by debtor, 30-9-112.

Compulsory disposition of collateral — acceptance of collateral as discharge of obligation, 30-9-505.

Secured party's liability for failure to comply with part, 30-9-507.

DEFINITIONAL

Account, 30-9-106.
Agreement, 30-1-201.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Contract, 30-1-201.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Gives notification, 30-1-201.
Good faith, 30-1-201.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Proceeds, 30-9-306.
Purchaser, 30-1-201.
Receives notification, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.

Send, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.
Written, 30-1-201.

30-9-505. *(Temporary)* **Compulsory disposition of collateral — acceptance of the collateral as discharge of obligation.** (1) If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods and has not signed after default a statement renouncing or modifying his rights under this part, a secured party who has taken possession of collateral must dispose of it under 30-9-504, and if he fails to do so within 90 days after he takes possession the debtor at his option may recover in conversion or under 30-9-507(1) on secured party's liability.

(2) (a) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection (2). In the case of consumer goods, no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral.

(b) Notice by the secured party is sufficient under subsection (2)(a) and constitutes steps reasonably required to inform another in the ordinary course under 30-1-201(26) if it is sent by certified mail to the most recent address provided by the debtor or another secured party as follows:

(i) the address stated on the security agreement or other applicable loan document in the case of a debtor or on the written notice of claim in the case of another secured party; or

(ii) such other address of which the secured party receives notice in writing from the debtor or other secured party prior to the time notification is sent to the most recent address previously given under subsection (2)(b)(i) or this subsection (2)(b)(ii).

(c) If the secured party receives objection in writing from a person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under 30-9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-505; amd. Sec. 84, Ch. 402, L. 1983; amd. Sec. 2, Ch. 3, L. 1987.

Cross-References

GENERAL

Property subject to security interest — disposition of proceeds — security agreement, 25-13-712.

DEFINITIONAL

Collateral, 30-9-105.
Consumer goods, 30-9-109.
Debtor, 30-9-105.
Knows, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchase money security interest, 30-9-107.
Receives notification, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Signed, 30-1-201.
Written, 30-1-201.

30-9-506. *(Temporary)* **Debtor's right to redeem collateral.** At any time before the secured party has disposed of collateral or entered into a contract for its disposition under 30-9-504 or before the obligation has been discharged under 30-9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-506.

Cross-References

GENERAL

Redemption of real property, Title 25, ch. 13, part 8.

Redemption, 71-3-116.

Right to redeem, 71-3-117.

DEFINITIONAL

Agreement, 30-1-201.

Collateral, 30-9-105.

Contract, 30-1-201.

Debtor, 30-9-105.

Secured party, 30-9-105.

Writing, 30-1-201.

30-9-507. *(Temporary)* **Secured party's liability for failure to comply with this part.** (1) If it is established that the secured party is not proceeding in accordance with the provisions of this part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 9-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-507.

Cross-References

GENERAL

Duty of secured party, 25-13-506.

Obligation of good faith, 30-1-203.

Title to collateral immaterial, 30-9-202.

Request for statement of account or list of collateral, 30-9-208.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

DEFINITIONAL

Collateral, 30-9-105.

Consumer goods, 30-9-109.

Creditor, 30-1-201.

Debtor, 30-9-105.

Knows, 30-1-201.

Notification, 30-1-201.

Person, 30-1-201.

Representative, 30-1-201.

Rights, 30-1-201.

Secured party, 30-9-105.

Security interest, 30-1-201.

30-9-508. *(Temporary)* **Foreclosure of security interests in personal property.** An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure by action of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest, but the remedial scope of proceedings for the foreclosure of interests subject to this chapter is governed by this part. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R.C.M. 1921; re-en. Sec. 8286, R.C.M. 1935; amd. Sec. 11-135, Ch. 264, L. 1963; R.C.M. 1947, 52-312; amd. Sec. 1, Ch. 189, L. 1979.

Cross-References

Personal property subject to security interest, 25-13-505.

Duty of secured party, 25-13-506.

Default — procedure when security agreement covers both real and personal property, 30-9-501.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

Filing of liens — rights — procedure — fees (motor vehicles), 61-3-103.

Foreclosure of real property mortgages, 71-1-222.

30-9-509. Repealed. Sec. 3, Ch. 189, L. 1979.

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R.C.M. 1921; re-en. Sec. 8287, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963; R.C.M. 1947, 52-313.

30-9-510. Repealed. Sec. 3, Ch. 189, L. 1979.

History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R.C.M. 1921; re-en. Sec. 8288, R.C.M. 1935; amd. Sec. 11-137, Ch. 264, L. 1963; R.C.M. 1947, 52-314.

30-9-511. *(Temporary)* **Counsel fees on foreclosure.** In an action to foreclose a security interest in personal property, the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, notwithstanding any stipulation in the instrument or any agreement between the parties to the contrary. *(Repealed effective July 1, 2001—secs. 168, 171, Ch. 305, L. 1999.)*

History: En. Sec. 1862, C. Civ. Proc. 1895; re-en. Sec. 7165, Rev. C. 1907; re-en. Sec. 9798, R.C.M. 1921; re-en. Sec. 9798, R.C.M. 1935; amd. Sec. 11-169, Ch. 264, L. 1963; R.C.M. 1947, 93-8613(part).

Cross-References

Determining compensation of attorneys, 25-10-301.

Inclusion of attorney fees in bill of costs, 25-10-302.

30-9-512 through 30-9-520 reserved.

30-9-521. *(Effective July 1, 2001)* **Filing office.** (1) Except as otherwise provided in subsection (2), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(a) the office designated for the filing or recording of a mortgage on the real property if:

(i) the collateral is as-extracted collateral or timber to be cut; or

(ii) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(b) the office of secretary of state in all other cases, including if the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures.

History: En. Sec. 71, Ch. 305, L. 1999.

30-9-522. *(Effective July 1, 2001)* **Contents of financing statement — mortgage as financing statement — time of filing financing statement.** (1) Subject to subsection (2), a financing statement is sufficient only if it:

(a) provides the name of the debtor;

(b) provides the name of the secured party or a representative of the secured party; and

(c) indicates the collateral covered by the financing statement.

(2) Except as otherwise provided in 30-9-521(2), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut or that is filed as a fixture filing and covers goods that are or are to become fixtures must comply with the requirements of subsection (1) and also:

(a) indicate that it covers this type of collateral;

(b) indicate that it is to be filed for record in the real property records;

(c) provide a description of the real property to which the collateral is related sufficient to give constructive notice of the mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(d) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(3) A record of mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(a) the record indicates the goods or accounts that it covers;

(b) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(c) the record complies with the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(d) the record is recorded.

(4) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

History: **En. Sec. 72, Ch. 305, L. 1999.**

30-9-523. *(Effective July 1, 2001)* **Name of debtor and secured party.** (1) A financing statement sufficiently provides the name of the debtor:

(a) if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization that shows the debtor to have been organized;

(b) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(c) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(i) provides the name, if any, specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(ii) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(d) in other cases:

(i) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(ii) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(2) A financing statement that provides the name of the debtor in accordance with subsection (1) is not rendered ineffective by the absence of:

(a) a trade name or other name of the debtor; or

(b) unless required under subsection (1)(d)(ii), names of partners, members, associates, or other persons comprising the debtor.

(3) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(4) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(5) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

History: En. Sec. 73, Ch. 305, L. 1999.

30-9-524. *(Effective July 1, 2001)* **Indication of collateral.** A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) a description of the collateral pursuant to 30-9-128; or

(2) an indication that the financing statement covers all assets or all personal property.

History: En. Sec. 74, Ch. 305, L. 1999.

30-9-525. *(Effective July 1, 2001)* **Filing and compliance with other statutes and treaties for consignments, leases, bailments, and other transactions.** (1) A consignor, lessor, or bailor of goods or a buyer of a payment intangible or promissory note may file a financing statement or may comply with a statute or treaty described in 30-9-331(1), using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor."

(2) This part applies to the filing of a financing statement under subsection (1) and, as appropriate, to compliance that is equivalent to filing a financing statement under 30-9-331(2), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, owner, or buyer that attaches to the collateral is perfected by the filing or compliance.

History: En. Sec. 75, Ch. 305, L. 1999.

30-9-526. *(Effective July 1, 2001)* **Effect of errors or omissions.** (1) A financing statement substantially complying with the requirements of this part is effective, even if it includes minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(2) Except as otherwise provided in subsection (3), a financing statement that fails sufficiently to provide the name of the debtor in accordance with 30-9-523(1) is seriously misleading.

(3) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with 30-9-523(1), the name provided does not make the financing statement seriously misleading.

(4) For purposes of 30-9-528(2), the "debtor's correct name" in subsection (3) means the correct name of the new debtor.

History: En. Sec. 76, Ch. 305, L. 1999.

30-9-527. *(Effective July 1, 2001)* **Effect of certain events on effectiveness of financing statement.** (1) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(2) Except as otherwise provided in 30-9-528 and subsection (3) of this section, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under the standard set forth in 30-9-526.

(3) If a debtor so changes its name that a filed financing statement becomes seriously misleading under the standard set forth in 30-9-526:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before or within 4 months after the change; and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change, unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within 4 months after the change.

History: En. Sec. 77, Ch. 305, L. 1999.

30-9-528. *(Effective July 1, 2001)* **Effectiveness of financing statement if new debtor becomes bound by security agreement.** (1) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(2) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (1) to be seriously misleading under the standard set forth in 30-9-526:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before and within 4 months after the new debtor becomes bound under 30-9-213(4); and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than 4 months after the new debtor becomes bound under 30-9-213(4) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(3) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under 30-9-527(1).

History: En. Sec. 78, Ch. 305, L. 1999.

30-9-529. *(Effective July 1, 2001)* **Persons entitled to file record.** (1) A person may file an initial financing statement, an amendment that adds collateral covered by a financing statement, or an amendment that adds a debtor to a financing statement only if:

(a) the debtor authorizes the filing in an authenticated record; or

(b) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(2) By authenticating a security agreement, a debtor authorizes the filing of an initial financing statement and an amendment covering:

(a) the collateral described in the security agreement; and

(b) property that becomes collateral under 30-9-335(1)(b), whether or not the security agreement expressly covers proceeds.

(3) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(a) the secured party of record authorizes the filing; or

(b) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by 30-9-533(1) or (3), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(4) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (3).

History: **En. Sec. 79, Ch. 305, L. 1999.**

30-9-530. *(Effective July 1, 2001)* **Effectiveness of filed record.** (1) A filed record is effective only to the extent that it was filed by a person that may file it under 30-9-529.

(2) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(3) A continuation statement that is not filed within the 6-month period prescribed by 30-9-535(4) is ineffective.

History: **En. Sec. 80, Ch. 305, L. 1999.**

30-9-531. *(Effective July 1, 2001)* **Secured party of record.** (1) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under 30-9-534(1), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(2) If an amendment of a financing statement that provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under 30-9-534(2), the assignee named in the amendment is a secured party of record.

(3) A person remains a secured party of record until the filing of an amendment of the financing statement that deletes the person.

History: **En. Sec. 81, Ch. 305, L. 1999.**

30-9-532. *(Effective July 1, 2001)* **Amendment of financing statement.** (1) Subject to 30-9-529, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or subject to subsection (5), otherwise amend the information provided in, a financing statement by filing an amendment that:

(a) identifies, by its file number, the debtor, the creditor, and the initial financing statement to which the amendment relates; and

(b) if the amendment relates to an initial financing statement filed or recorded in a filing office described in 30-9-521(1)(b), provides the date that the initial financing statement was filed or recorded and the information specified in 30-9-522(2).

(2) Except as otherwise provided in 30-9-535, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(3) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(4) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(5) An amendment is ineffective to the extent it:

(a) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(b) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

History: **En. Sec. 82, Ch. 305, L. 1999.**

30-9-533. *(Effective July 1, 2001)* **Termination statement.** (1) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(a) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(b) the debtor did not authorize the filing of the initial financing statement.

(2) To comply with subsection (1), a secured party shall cause the secured party of record to file the termination statement:

(a) within 1 month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(b) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(3) In cases not governed by subsection (1), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(a) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(b) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(c) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(d) the debtor did not authorize the filing of the initial financing statement.

(4) Except as otherwise provided in 30-9-530, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective.

History: **En. Sec. 83, Ch. 305, L. 1999.**

30-9-534. *(Effective July 1, 2001)* **Assignment powers of secured party of record.** (1) Except as otherwise provided in subsection (3), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(2) Except as otherwise provided in subsection (3), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement that:

(a) identifies, by its file number, the initial financing statement to which it relates;

(b) provides the name of the assignor; and

(c) provides the name and mailing address of the assignee.

(3) An assignment of record of a security interest in a fixture covered by a real property mortgage that is effective as a fixture filing under 30-9-522(3) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than chapters 1 through 9.

History: **En. Sec. 84, Ch. 305, L. 1999.**

30-9-535. *(Effective July 1, 2001)* **Duration and effectiveness of financing statement — effect of lapsed financing statement.** (1) Except as otherwise provided in subsections (2), (5), (6), and (7), a filed financing statement is effective for a period of 5 years after the date of filing.

(2) Except as otherwise provided in subsections (5), (6), and (7), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(3) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (4). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected without filing. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(4) A continuation statement may be filed only within 6 months before the expiration of the 5-year period specified in subsection (1) or the 30-year period specified in subsection (2), whichever is applicable.

(5) Except as otherwise provided in 30-9-530, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of 5 years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the 5-year period, the financing statement lapses in the same manner as provided in subsection (3), unless, before the lapse, another continuation statement is filed pursuant to subsection (4). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(6) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(7) A record of mortgage that is effective as a fixture filing under 30-9-522(3) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

History: En. Sec. 85, Ch. 305, L. 1999.

30-9-536. *(Effective July 1, 2001)* **What constitutes filing — effectiveness of filing.** (1) Except as otherwise provided in subsection (2), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(2) Filing does not occur with respect to a record that a filing office refuses to accept because:

(a) the record is not communicated by a method or medium of communication authorized by the filing office;

(b) an amount equal to or greater than the applicable filing fee is not tendered;

(c) the filing office is unable to index the record because:

(i) in the case of an initial financing statement, the record does not provide a name for the debtor;

(ii) in the case of an amendment or correction statement, the record:

(A) does not identify the initial financing statement as required by 30-9-532 or 30-9-538, as applicable; or

(B) identifies an initial financing statement whose effectiveness has lapsed under 30-9-535;

(iii) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual that was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(iv) in the case of a record filed or recorded in the filing office described in 30-9-521(1)(a), the record does not provide a sufficient description of the real property to which it relates;

(d) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(e) in the case of an initial financing statement or an amendment that provides a name of a debtor that was not previously provided in the financing statement to which the amendment relates, the record does not:

(i) provide a mailing address for the debtor;

(ii) indicate whether the debtor is an individual or an organization; or

(iii) if the financing statement indicates that the debtor is an organization, provide:

(A) a type of organization for the debtor;

(B) a jurisdiction of organization for the debtor; or

(C) an organizational identification number for the debtor or indicate that the debtor has none;

(f) in the case of an assignment reflected in an initial financing statement under 30-9-534(1) or an amendment filed under 30-9-534(2), the record does not provide a name and mailing address for the assignee; or

(g) in the case of a continuation statement, the record is not filed within the 6-month period prescribed by 30-9-535(4).

(3) For purposes of subsection (2):

(a) a record does not provide information if the filing office is unable to read or decipher the information; and

(b) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by 30-9-532, 30-9-534, or 30-9-538, is an initial financing statement.

(4) A record that is communicated to the filing office with tender of the filing fee, but that the filing office refuses to accept for a reason other than one set forth in subsection (2), is effective as a filed record except as against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files.

History: **En. Sec. 86, Ch. 305, L. 1999.**

30-9-537. *(Effective July 1, 2001)* **Effect of indexing errors.** The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

History: **En. Sec. 87, Ch. 305, L. 1999.**

30-9-538. *(Effective July 1, 2001)* **Claim concerning inaccurate or wrongfully filed record.** (1) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(2) A correction statement must:

(a) identify the record to which it relates by:

(i) the file number assigned to the initial financing statement to which the record relates; and

(ii) if the correction statement relates to a record filed in a filing office described in 30-9-521(1)(a), the date that the initial financing statement was filed or recorded and the information specified in 30-9-522(2);

(b) indicate that it is a correction statement; and

(c) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(3) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

History: En. Sec. 88, Ch. 305, L. 1999.

30-9-539. *(Effective July 1, 2001)* **Numbering, maintaining, and indexing records — communicating information provided in records.** (1) For each record filed in a filing office, the filing office shall:

(a) assign a unique number to the filed record;

(b) create a record that bears the number assigned to the filed record and the date and time of filing;

(c) maintain the filed record for public inspection; and

(d) index the filed record in accordance with subsections (3), (4), and (5).

(2) A file number assigned after January 1, 2002, must include a digit that:

(a) is mathematically derived from or related to the other digits of the file number; and

(b) enables the filing office to detect whether a number communicated as the file number includes a single-digit or transpositional error.

(3) Except as otherwise provided in subsections (4) and (5), the filing office shall:

(a) index an initial financing statement according to the name of the debtor and shall index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(b) index a record that provides a name of a debtor that was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(4) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(a) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(b) to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or if indexing is by description, as if the financing statement were a mortgage of the real property described.

(5) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under 30-9-534(1) or an amendment filed under 30-9-534(2):

(a) under the name of the assignor as grantor; and

(b) to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(6) The filing office shall maintain a capability:

(a) to retrieve a record by the name of the debtor and:

(i) if the filing office is described in 30-9-521(1)(a), by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed; or

(ii) if the filing office is described in 30-9-521(1)(b), by the file number assigned to the initial financing statement to which the record relates; and

(b) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(7) The filing office may not remove a debtor's name from the index until 1 year after the effectiveness of a financing statement naming the debtor lapses under 30-9-535 with respect to all secured parties of record.

(8) The filing office shall perform the acts required by subsections (1) through (5) at the time and in the manner prescribed by filing-office rule, but not later than 2 business days after the filing office receives the record in question.

(9) Subsections (2) and (8) do not apply to a filing office described in 30-9-521(1)(a).

History: En. Sec. 89, Ch. 305, L. 1999.

30-9-540. *(Effective July 1, 2001)* **Acceptance and refusal to record.** (1) A filing office shall refuse to accept a record for filing for a reason set forth in 30-9-522 and 30-9-536(2) and may refuse to accept a record for filing only for a reason set forth in 30-9-522 and 30-9-536(2).

(2) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than 2 business days after the filing office receives the record.

(3) A filed financing statement complying with 30-9-522(1) and (2) is effective, even if the filing office is required to refuse to accept it for filing under subsection (1). However, 30-9-358 applies to a filed financing statement providing information described in 30-9-536(2)(e) that is incorrect at the time the financing statement is filed.

(4) If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

History: En. Sec. 90, Ch. 305, L. 1999.

30-9-541. *(Effective July 1, 2001)* **Uniform form of written financing statement and amendment.** (1) A filing office that accepts written records may not refuse to accept a written initial financing statement in the model form adopted by the secretary of state except for a reason set forth in 30-9-522 and 30-9-536(2).

(2) A filing office that accepts written records may not refuse to accept a written record in the model form adopted by the secretary of state except for a reason set forth in 30-9-522 and 30-9-536(2).

History: En. Sec. 91, Ch. 305, L. 1999.

30-9-542. *(Effective July 1, 2001)* **Maintenance and destruction of records.** (1) Subject to the requirements of Title 2, chapter 6, part 2, the filing office shall maintain a record of the information provided in a filed financing statement for at least 1 year after the effectiveness of the filed financing statement has lapsed under 30-9-535 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

(a) if the record was filed or recorded in the filing office described in 30-9-521(1)(a), by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(b) if the record was filed or recorded in the filing office described in 30-9-521(1)(b), by using the date and time file number assigned to the initial financing statement to which the record relates.

(2) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office may immediately destroy any written record evidencing a financing statement. However, if the filing office destroys a written

record, it shall maintain another record of the financing statement that complies with subsection (1).

History: **En. Sec. 92, Ch. 305, L. 1999.**

30-9-543. *(Effective July 1, 2001)* **Information from filing office — sale or license of records.** (1) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to 30-9-539(1)(a) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(a) note upon the copy the number assigned to the record pursuant to 30-9-539(1)(a) and the date and time of the filing of the record; and

(b) send the copy to the person.

(2) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(a) the information in the record;

(b) the number assigned to the record pursuant to 30-9-539(1)(a); and

(c) the date and time of the filing of the record.

(3) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(a) whether there is on file on a date and time specified by the filing office, but not a date earlier than 3 business days before the filing office receives the request, any financing statement that:

(i) designates a particular debtor;

(ii) has not lapsed under 30-9-535 with respect to all secured parties of record; and

(iii) if the request so states, has lapsed under 30-9-535 and a record of which is maintained by the filing office under 30-9-542(1);

(b) the date and time of filing of each financing statement; and

(c) the information provided in each financing statement.

(4) In complying with its duty under subsection (3), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(5) The filing office shall perform the acts required by subsections (1) through (4) at the time and in the manner prescribed by filing-office rule, but not later than 2 business days after the filing office receives the request.

(6) At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in a reasonable form or medium from time to time available to the filing office.

History: **En. Sec. 93, Ch. 305, L. 1999.**

30-9-544. *(Effective July 1, 2001)* **Delay by filing office.** Delay by the filing office beyond a time limit prescribed in this part is excused if:

(1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the filing office; and

(2) the filing office exercises reasonable diligence under the circumstances.

History: **En. Sec. 94, Ch. 305, L. 1999.**

30-9-545. *(Effective July 1, 2001)* **Fees.** (1) Except as otherwise provided in subsection (5), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in 30-9-522(3), must be commensurate with costs and must be established by rule.

(2) Except as otherwise provided in subsection (5), the fee for filing and indexing an initial financing statement of the kind described in 30-9-522(3) must be commensurate with costs and must be established by rule.

(3) The number of names required to be indexed does not affect the amount of the fees in subsections (1) and (2).

(4) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, must be commensurate with costs and must be established by rule.

(5) This section does not require a fee with respect to a record of mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under 30-9-522(3). However, the recording and satisfaction fees that otherwise would be applicable to the record of mortgage apply.

History: En. Sec. 95, Ch. 305, L. 1999.

30-9-546. *(Effective July 1, 2001)* **Filing-office rules.** (1) The secretary of state shall adopt and publish rules to carry out the provisions of this chapter. The filing-office rules must be:

(a) consistent with this chapter; and

(b) adopted and published in accordance with Title 2, chapter 4.

(2) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the secretary of state, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing filing-office rules shall:

(a) consult with filing offices in other jurisdictions that enact substantially this part;

(b) consult the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization; and

(c) take into consideration the rules and practices of and the technology used by filing offices in other jurisdictions that enact substantially this part.

History: En. Sec. 96, Ch. 305, L. 1999.

30-9-547. *(Effective July 1, 2001)* **Duty to report.** The secretary of state shall report to each session of the legislature on the operation of the filing office. The report must contain a statement of the extent to which:

(1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

(2) the filing-office rules are not in harmony with the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization and the reasons for these variations.

History: En. Sec. 97, Ch. 305, L. 1999.

Part 6

Default

30-9-601. *(Effective July 1, 2001)* **Rights after default — judicial enforcement — consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.** (1) After default, a secured party has the rights provided in this part and, except as otherwise provided in 30-9-602, those provided by agreement of the parties. A secured party:

(a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(b) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) A secured party in possession of collateral or control of collateral under 30-9-124, 30-9-125, 30-9-126, or 30-9-127 has the rights and duties provided in 30-9-217.

(3) The rights under subsections (1) and (2) are cumulative and may be exercised simultaneously.

(4) Except as otherwise provided in 30-9-605 and subsection (7) of this section, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(a) the date of perfection of the security interest or agricultural lien in the collateral;

(b) the date of filing a financing statement covering the collateral; or

(c) any date specified in a statute under which the agricultural lien was created.

(6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(7) Except as otherwise provided in 30-9-607(3), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

History: En. Sec. 98, Ch. 305, L. 1999.

30-9-602. *(Effective July 1, 2001)* **Waiver and variance of rights and duties.** Except as provided in 30-9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) 30-9-217(2)(d)(iii), which deals with use and operation of the collateral by the secured party;

(2) 30-9-220, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) 30-9-607(3), which deals with collection and enforcement of collateral;

(4) 30-9-608(1) and 30-9-615(3) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) 30-9-608(1) and 30-9-615(4) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) 30-9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) 30-9-610(2), 30-9-611, 30-9-613, and 30-9-614, which deal with disposition of collateral;

(8) 30-9-615(6), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) 30-9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) 30-9-620 through 30-9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) 30-9-623, which deals with redemption of collateral;

(12) 30-9-624, which deals with permissible waivers; and

(13) 30-9-625 and 30-9-626, which deal with the secured party's liability for failure to comply with this chapter.

History: En. Sec. 99, Ch. 305, L. 1999.

30-9-603. *(Effective July 1, 2001)* **Agreement on standards concerning rights and duties.** (1) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party if the standards are not manifestly unreasonable.

(2) Subsection (1) does not apply to the duty under 30-9-609 to refrain from breaching the peace.

History: En. Sec. 100, Ch. 305, L. 1999.

30-9-604. *(Effective July 1, 2001)* **Procedure if security agreement covers real property or fixtures.** (1) If a security agreement covers both personal and real property, a secured party may proceed:

(a) under this part as to the personal property without prejudicing any rights and remedies with respect to the real property; or

(b) as to both the personal property and the real property in accordance with the rights and remedies with respect to the real property, in which case the other provisions of this part do not apply.

(2) Subject to subsection (3), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(a) under this part; or

(b) in accordance with the rights and remedies with respect to real property, in which case the other provisions of this part do not apply.

(3) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, on default, may remove the collateral from the real property.

(4) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

History: En. Sec. 101, Ch. 305, L. 1999.

30-9-605. *(Effective July 1, 2001)* **Unknown debtor or secondary obligor.** A secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(a) that the person is a debtor or obligor;

(b) the identity of the person; and

(c) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against the person unless the secured party knows:

(a) that a person is a debtor; and

(b) the identity of the person.

History: En. Sec. 102, Ch. 305, L. 1999.

30-9-606. *(Effective July 1, 2001)* **Time of default for agricultural lien.** For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

History: **En. Sec. 103, Ch. 305, L. 1999.**

30-9-607. *(Effective July 1, 2001)* **Collection and enforcement by secured party.** (1) If so agreed, and in any event on default, a secured party:

(a) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(b) may take any proceeds to which the secured party is entitled under 30-9-335;

(c) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights and remedies of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(d) if it holds a security interest in a deposit account perfected by control under 30-9-124(1)(a), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(e) if it holds a security interest in a deposit account perfected by control under 30-9-124(1)(b) or (1)(c), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(2) If necessary to enable a secured party to exercise under subsection (1)(c) the right of a debtor to enforce nonjudicially any mortgage, the secured party may record in the office in which the mortgage is recorded:

(a) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(b) the secured party's sworn affidavit in recordable form stating that:

(i) a default has occurred; and

(ii) the secured party is entitled to enforce the mortgage nonjudicially.

(3) A secured party shall proceed in a commercially reasonable manner if the secured party:

(a) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(b) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(4) A secured party may deduct from the collections made pursuant to subsection (3) reasonable expenses of collection and enforcement, including reasonable attorneys fees and legal expenses incurred by the secured party.

(5) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

History: **En. Sec. 104, Ch. 305, L. 1999.**

30-9-608. *(Effective July 1, 2001)* **Application of proceeds of collection or enforcement — liability for deficiency and right to surplus.** (1) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under this section in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(iii) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subsection (1)(a)(iii).

(c) A secured party need not apply or pay over for application the noncash proceeds of collection and enforcement under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus and the obligor is not liable for any deficiency.

History: **En. Sec. 105, Ch. 305, L. 1999.**

30-9-609. *(Effective July 1, 2001)* **Secured party's right to take possession after default.** (1) After default, a secured party:

(a) may take possession of the collateral; and

(b) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under 30-9-610.

(2) A secured party may proceed under subsection (1):

(a) pursuant to judicial process; or

(b) without judicial process, if it proceeds without breach of the peace.

(3) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party that is reasonably convenient to both parties.

History: **En. Sec. 106, Ch. 305, L. 1999.**

30-9-610. *(Effective July 1, 2001)* **Disposition of collateral after default.** (1) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(2) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(3) A secured party may purchase collateral:

(a) at a public disposition; or

(b) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like that by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4):

(a) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(b) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

History: En. Sec. 107, Ch. 305, L. 1999.

30-9-611. *(Effective July 1, 2001)* **Notification before disposition of collateral.** (1) In this section, "notification date" means the earlier of the date on which:

(a) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(b) the debtor and any secondary obligor waive the right to notification.

(2) Except as otherwise provided in subsection (4), a secured party that disposes of collateral under 30-9-610 shall send to the persons specified in subsection (3) a reasonable authenticated notification of disposition.

(3) To comply with subsection (2), the secured party shall send an authenticated notification of disposition to:

(a) the debtor;

(b) any secondary obligor; and

(c) if the collateral is other than consumer goods:

(i) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(ii) any other secured party that, 10 days before the notification date, held a security interest in or agricultural lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(iii) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 30-9-331(1).

(4) Subsection (2) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(5) A secured party complies with the requirement for notification prescribed in subsection (3)(c)(ii) if:

(a) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (3)(c)(ii); and

(b) before the notification date, the secured party:

(i) did not receive a response to the request for information; or

(ii) received a response to the request for information and sent an authenticated notification of disposition to each secured party named in that response and whose financing statement covered the collateral.

History: En. Sec. 108, Ch. 305, L. 1999.

30-9-612. *(Effective July 1, 2001)* **Timeliness of notification before disposition of collateral.** (1) Except as otherwise provided in subsection (2), whether a notification is sent within a reasonable time is a question of fact.

(2) In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of

disposition set forth in the notification is sent within a reasonable time before the disposition.

History: **En. Sec. 109, Ch. 305, L. 1999.**

30-9-613. *(Effective July 1, 2001)* **Contents and form of notification before disposition of collateral — general.** (1) Except in a consumer-goods transaction, the following rules apply:

(a) The contents of a notification of disposition are sufficient if the notification:

(i) describes the debtor and the secured party;

(ii) describes the collateral that is the subject of the intended disposition;

(iii) states the method of intended disposition;

(iv) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(v) states the time and place of a public sale or the time after which any other disposition is to be made.

(b) Whether the contents of a notification that lacks any of the information set forth in subsection (1) are nevertheless sufficient is a question of fact.

(c) The contents of a notification providing substantially the information specified in subsection (1) are sufficient, even if the notification includes:

(i) information not specified by that subsection; or

(ii) minor errors that are not seriously misleading.

(d) A particular phrasing of the notification is not required.

(2) The following form of notification and the form appearing in 30-9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: ____________

Time: ____________

Place: ____________

[For a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of $____]. You may request an accounting by calling us at [telephone number]

[End of Form]

History: **En. Sec. 110, Ch. 305, L. 1999.**

30-9-614. *(Effective July 1, 2001)* **Contents and form of notification before disposition of collateral — consumer-goods transaction.** In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(a) the information specified in 30-9-613(1)(a);

(b) a description of any liability for a deficiency of the person to which the notification is sent;

(c) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under 30-9-623 is available; and

(d) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]
[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]
Subject:[Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: __________
Time: __________
Place: __________

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] or write us at [secured party's address] and request a written explanation. [We will charge you $__ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] or write us at [secured party's address].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement: [Names of all other debtors and obligors, if any]

[End of Form]

(4) A notification in the form of subsection (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of subsection (3) is sufficient, even if it includes errors in information not required by subsection (1), unless the error is misleading with respect to rights arising under this chapter.

(6) If a notification under this section is not in the form of subsection (3), law other than this chapter determines the effect of including information not required by subsection (1).

History: En. Sec. 111, Ch. 305, L. 1999.

30-9-615. *(Effective July 1, 2001)* **Application of proceeds of disposition — liability for deficiency and right to surplus.** (1) A secured party shall apply or pay over for application the cash proceeds of disposition in the following order to:

(a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and to the extent provided for by agreement and not prohibited by law, reasonable attorneys fees and legal expenses incurred by the secured party;

(b) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(c) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral if:

(i) the secured party receives from the holder of the subordinate security interest an authenticated demand for proceeds before distribution of the proceeds is completed; and

(ii) if a consignor has an interest in the collateral, the subordinate security interest or lien is senior to the interest of the consignor; and

(d) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (1)(c).

(3) A secured party need not apply or pay over for application noncash proceeds of disposition under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) and permitted by subsection (3):

(a) unless subsection (1)(d) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(b) the obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(a) the debtor is not entitled to any surplus; and

(b) the obligor is not liable for any deficiency.

(6) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with the requirements of this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(a) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(b) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(7) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(a) takes the cash proceeds free of the security interest or other lien;

(b) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(c) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

History: En. Sec. 112, Ch. 305, L. 1999.

30-9-616. *(Effective July 1, 2001)* **Explanation of calculation of surplus or deficiency.** (1) In this section, the following definitions apply:

(a) "Explanation" means a writing that:

(i) states the amount of the surplus or deficiency;

(ii) provides an explanation in accordance with subsection (3) of how the secured party calculated the surplus or deficiency;

(iii) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest rebates, and expenses may affect the amount of the surplus or deficiency; and

(iv) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(b) "Request" means a record:

(i) authenticated by a debtor or consumer obligor;

(ii) requesting that the recipient provide an explanation; and

(iii) sent after disposition of the collateral under 30-9-610.

(2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under 30-9-615, the secured party shall:

(a) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(i) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(ii) within 14 days after receipt of a request; or

(b) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(3) To comply with subsection (1)(a)(ii), a writing must provide the following information in the following order:

(a) the aggregate amount of obligations secured by the security interest under which the disposition was made, and if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(i) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(ii) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(b) the amount of proceeds of the disposition;

(c) the aggregate amount of the obligations after deducting the amount of proceeds;

(d) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorneys fees secured by the collateral that are known to the secured party and relate to the current disposition;

(e) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and that are not reflected in the amount in subsection (3)(a); and

(f) the amount of the surplus or deficiency.

(4) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (1)(a) is sufficient, even if it includes minor errors that are not seriously misleading.

(5) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any 6-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (2)(a). The secured party may require payment of a charge not exceeding $25 for each additional response.

History: **En. Sec. 113, Ch. 305, L. 1999.**

30-9-617. *(Effective July 1, 2001)* **Rights of transferee of collateral.** (1) A secured party's disposition of collateral after default:

(a) transfers to a transferee for value all of the debtor's rights in the collateral;

(b) discharges the security interest under which the disposition is made; and

(c) discharges any subordinate security interest or other lien.

(2) A transferee that acts in good faith takes free of the rights and interests described in subsection (1), even if the secured party fails to comply with the requirements of this chapter or any judicial proceedings.

(3) If a transferee does not take free of the rights and interests described in subsection (1), the transferee takes the collateral subject to:

(a) the debtor's rights in the collateral;

(b) the security interest or agricultural lien under which the disposition is made; and

(c) any security interest or other lien.

History: **En. Sec. 114, Ch. 305, L. 1999.**

30-9-618. *(Effective July 1, 2001)* **Rights and duties of certain secondary obligors.** (1) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(a) receives an assignment of a secured obligation from the secured party;

(b) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(c) is subrogated to the rights of a secured party with respect to collateral.

(2) An assignment, transfer, or subrogation described in subsection (1):

(a) is not a disposition of collateral under 30-9-610; and

(b) relieves the secured party of further duties under this chapter.

History: **En. Sec. 115, Ch. 305, L. 1999.**

30-9-619. *(Effective July 1, 2001)* **Transfer of record or legal title.** (1) In this section, "transfer statement" means a record authenticated by a secured party stating:

(a) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(b) that the secured party has exercised its postdefault remedies with respect to the collateral;

(c) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(d) the name and mailing address of the secured party, debtor, and transferee.

(2) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate of title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(a) accept the transfer statement;

(b) promptly amend its records to reflect the transfer; and

(c) if applicable, issue a new appropriate certificate of title in the name of transferee.

(3) A transfer of the record or legal title to collateral to a secured party under subsection (2) or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

History: En. Sec. 116, Ch. 305, L. 1999.

30-9-620. *(Effective July 1, 2001)* **Acceptance of collateral in full or partial satisfaction — compulsory disposition of collateral.** (1) Except as otherwise provided in subsection (7), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(a) the debtor consents to the acceptance under subsection (3);

(b) the secured party does not receive, within the time set forth in subsection (4), a notification of objection to the proposal authenticated by:

(i) a person to which the secured party was required to send a proposal under 30-9-621; or

(ii) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(c) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(d) subsection (5) does not require the secured party to dispose of the collateral.

(2) A purported or apparent acceptance of collateral under this section is ineffective unless:

(a) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(b) the conditions of subsection (1) are met.

(3) For purposes of this section:

(a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(i) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(iii) does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(4) To be effective under subsection (1)(b), a notification of objection must be received by the secured party:

(a) in the case of a person to which the proposal was sent pursuant to 30-9-621, within 20 days after notification was sent to that person; and

(b) in other cases:

(i) within 20 days after the last notification was sent pursuant to 30-9-621; or

(ii) if a notification was not sent, before the debtor consents to the acceptance under subsection (3).

(5) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to 30-9-610 within the time specified in subsection (6) if:

(a) 60% of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(b) 60% of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(6) To comply with subsection (5), the secured party shall dispose of the collateral:

(a) within 90 days after taking possession; or

(b) within any longer period to which the debtor and all secondary obligors have agreed by authenticating a record including a statement to that effect after default.

(7) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

History: En. Sec. 117, Ch. 305, L. 1999.

30-9-621. *(Effective July 1, 2001)* **Notification of proposal to accept collateral.** (1) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(a) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(b) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(c) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 30-9-331(1).

(2) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (1).

History: En. Sec. 118, Ch. 305, L. 1999.

30-9-622. *(Effective July 1, 2001)* **Effect of acceptance of collateral.** (1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(a) discharges the obligation to the extent consented to by the debtor;

(b) transfers to the secured party all of a debtor's rights in the collateral;

(c) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other lien; and

(d) terminates any other subordinate interest.

(2) A subordinate interest is discharged or terminated under subsection (1) whether or not the secured party is required to send or does send its proposal to the holder of the interest. However, any person to which the secured party was required to send, but did not send, its proposal has the remedy provided by 30-9-625(2).

History: En. Sec. 119, Ch. 305, L. 1999.

30-9-623 . *(Effective July 1, 2001)* **Right to redeem collateral.** (1) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(2) To redeem collateral, a person shall tender:

(a) fulfillment of all obligations secured by the collateral; and

(b) the reasonable expenses and attorneys fees described in 30-9-615(1)(a).

(3) A redemption may occur at any time before a secured party:

(a) has collected collateral under 30-9-607;

(b) has disposed of collateral or entered into a contract for its disposition under 30-9-610; or

(c) has accepted collateral in full or partial satisfaction of the obligation it secures under 30-9-622.

History: En. Sec. 120, Ch. 305, L. 1999.

30-9-624. *(Effective July 1, 2001)* **Waiver.** (1) A debtor or secondary obligor may waive the right to notification of disposition of collateral under 30-9-611 only by authenticating an agreement to that effect entered into and authenticated after default.

(2) A debtor may waive the right to require disposition of collateral under 30-9-620(5) only by an agreement to that effect entered into and authenticated after default.

(3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under 30-9-623 only by an agreement to that effect after default.

History: En. Sec. 121, Ch. 305, L. 1999.

30-9-625. *(Effective July 1, 2001)* **Remedies for secured party's failure to comply with chapter.** (1) If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsections (3), (4), and (6), a secured party is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply with a request under 30-9-220 may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) Except as otherwise provided in 30-9-628:

(a) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (2) for its loss; and

(b) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time-price differential plus 10% of the cash price.

(4) A debtor whose deficiency is eliminated under 30-9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under 30-9-626 may not otherwise recover under subsection (2) of this section for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(5) In addition to any damages recoverable under subsection (2), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from:

(a) a secured party that fails to comply with 30-9-218;

(b) a secured party that fails to comply with 30-9-219;

(c) a person that files a record that the person is not entitled to file under 30-9-529(1);

(d) a secured party that fails to cause the secured party of record to file or send a termination statement as required by 30-9-533(1) or (3);

(e) a secured party that fails to comply with 30-9-616(2)(a) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(f) a secured party that fails to comply with 30-9-616(2)(b).

(6) A debtor or consumer obligor may recover damages under subsection (2) and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under 30-9-220. A recipient of a request under 30-9-220 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(7) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under 30-9-220, the secured party may claim a security interest only as shown in the statement included in the request as against a person that is reasonably misled by the failure.

History: En. Sec. 122, Ch. 305, L. 1999.

30-9-626. *(Effective July 1, 2001)* **Action in which deficiency or surplus is in issue.** (1) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(a) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(b) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(c) Except as otherwise provided in 30-9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorneys fees exceeds the greater of:

(i) the proceeds of the collection, enforcement, disposition, or acceptance; or

(ii) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(d) For purposes of subsection (1)(c)(ii), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorneys fees unless the secured party proves that the amount is less than that sum.

(e) If a deficiency or surplus is calculated under 30-9-615(6), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(2) The limitation of the rules in subsection (1) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

History: **En. Sec. 123, Ch. 305, L. 1999.**

30-9-627. *(Effective July 1, 2001)* **Determination of whether conduct was commercially reasonable.** (1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(a) in the usual manner on any recognized market;

(b) at the price current in any recognized market at the time of the disposition; or

(c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(3) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(a) in a judicial proceeding;

(b) by a bona fide creditors' committee;

(c) by a representative of creditors; or

(d) by an assignee for the benefit of creditors.

(4) Approval under subsection (3) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

History: **En. Sec. 124, Ch. 305, L. 1999.**

30-9-628. *(Effective July 1, 2001)* **Nonliability and limitation on liability of secured party — liability of secondary obligor.** (1) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(a) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and

(b) the secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.

(2) A secured party is not liable because of its status as a secured party:

(a) to a person that is a debtor or obligor, unless the secured party knows:

(i) that the person is a debtor or obligor;

(ii) the identity of the person; and

(iii) how to communicate with the person; or

(b) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(i) that the person is a debtor; and

(ii) the identity of the person.

(3) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods if the secured party's belief is based on its reasonable reliance on:

(a) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(b) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(4) A secured party is not liable to any person under 30-9-625(3)(b) for its failure to comply with 30-9-616.

(5) A secured party is not liable under 30-9-625(3)(b) more than once with respect to any one secured obligation.

History: En. Sec. 125, Ch. 305, L. 1999.

CHAPTER 10

SECURITIES REGULATION

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Chapter Cross-References

Registration of public obligations, Title 17, ch. 5, part 11.

Uniform Commercial Code — investment securities, Title 30, ch. 8.

Part 1

General Application

30-10-101. Short title. Parts 1 through 3 of this chapter may be cited as the "Securities Act of Montana".

History: En. Sec. 2, Ch. 251, L. 1961; R.C.M. 1947, 15-2002.

30-10-102. Policy. Parts 1 through 3 of this chapter shall be construed to:

(1) protect the investor, persons engaged in securities transactions, and the public interest;

(2) promote uniformity among the states; and

(3) encourage, promote, and facilitate capital investment in Montana.

History: En. Sec. 3, Ch. 251, L. 1961; R.C.M. 1947, 15-2003; amd. Sec. 1, Ch. 322, L. 1983.

30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition. Salesperson does not include an individual who represents:

(a) an issuer in:

(i) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(ii) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933; or

(iv) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

History: En. Sec. 4, Ch. 251, L. 1961; R.C.M. 1947, 15-2004; amd. Secs. 1, 8, Ch. 351, L. 1979; amd. Sec. 2, Ch. 322, L. 1983; amd. Sec. 1, Ch. 478, L. 1985; amd. Sec. 1, Ch. 269, L. 1987; amd. Sec. 1, Ch. 270, L. 1987; amd. Sec. 1, Ch. 272, L. 1987; amd. Sec. 76, Ch. 370, L. 1987; amd. Sec. 1, Ch. 249, L. 1989; amd. Sec. 1, Ch. 2, L. 1991; amd. Sec. 1, Ch. 228, L. 1991; amd. Sec. 1, Ch. 162, L. 1993; amd. Sec. 1, Ch. 239, L. 1995; amd. Sec. 135, Ch. 42, L. 1997; amd. Sec. 1, Ch. 533, L. 1997; amd. Sec. 2, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in definition of federal covered adviser in (b) substituted listing of exclusions for former text that read: "excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940"; in definition of investment adviser representative inserted (a)(ii) to include a person who is an investment adviser representative with a place of business in this state and in (b) at end inserted "or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter"; and made minor changes in style. Amendment effective April 27, 1999.

30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 and 30-10-211 do not apply to any of the following securities:

(1) any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 and 30-10-211 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless the enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (15) of this section;

(2) any security issued or guaranteed by Canada, a Canadian province, a political subdivision of a province, or an agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by a bank organized under the laws of the United States or a bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in, or a debt of, or guaranteed by a federal savings and loan association or a building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by a federal credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) any security issued or guaranteed by a railroad, other common carrier, public utility, or holding company that is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of a registered holding company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by the railroad or public utility would be exempt under this subsection;

(7) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed an authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been registered for the 3 years immediately preceding the offering date;

(c) the issuer or a significant subsidiary has not had a material default during the last 7 years, or during the issuer's existence if that period is less than 7 years, in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least $1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 ½ times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year", as used in this subsection (7)(d), means the most recent year for which audited financial statements are available, provided that the statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, the securities have voting rights and rights including the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on that date there are at least 750,000 of the shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within the 20-day period;

(9) any commercial paper that arises out of a current transaction or the proceeds of which have been or are to be used for the current transaction and that evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of the paper that is likewise limited or any guarantee of the paper or of any renewal, when the commercial paper is sold to banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(14) any security issued by and representing an interest in, or a debt of, or any security guaranteed by any insurer organized and authorized to transact business under the laws of any state;

(15) any security for which an offer or sale is not directed to or received by a person in this state, and the issuer does not maintain a place of business in the state.

History: En. Sec. 13, Ch. 251, L. 1961; R.C.M. 1947, 15-2013; amd. Sec. 2, Ch. 351, L. 1979; amd. Sec. 3, Ch. 322, L. 1983; amd. Sec. 2, Ch. 478, L. 1985; amd. Sec. 2, Ch. 272, L.

1987; amd. Sec. 2, Ch. 249, L. 1989; amd. Sec. 2, Ch. 228, L. 1991; amd. Sec. 2, Ch. 533, L. 1997; amd. Sec. 3, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in introductory clause and in (1) near middle after "30-10-207" inserted "and 30-10-211"; and made minor changes in style. Amendment effective April 27, 1999.

Cross-References

Authorization to issue securities, 69-14-507.

30-10-105. Exempt transactions — rulemaking. Except as expressly provided in this section, 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has been no default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer

or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer. However, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) any transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees are then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by a subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer, but not a sale, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation order is not in effect and a public proceeding or examination looking toward an order is not pending under either law;

(12) an offer, but not a sale, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by security holders for the distribution other than the surrender of a right to a cash dividend when the security holder can elect to take a dividend in cash or in securities;

(14) a transaction incident to a right of conversion, a statutory or judicially approved reclassification, or a recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 and 30-10-211 apply to any transactional exemptions adopted by rule.

(16) a transaction in the securities of a certified Montana capital company or a certified Montana small business investment capital company, as defined in 90-8-104, if the company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is delivered into the possession of a depository, other than the seller, that:

(i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (19)(b), to be physically located within Montana at all times after the 7-day delivery period provided in subsection (19)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(21) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code; or

(22) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;

(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection (22) unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished the commissioner with a general written description of the transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for the purposes of this subsection (22).

History: En. Sec. 14, Ch. 251, L. 1961; amd. Sec. 1, Ch. 185, L. 1973; R.C.M. 1947, 15-2014; amd. Sec. 3, Ch. 351, L. 1979; amd. Sec. 4, Ch. 322, L. 1983; amd. Sec. 3, Ch. 478, L. 1985; amd. Sec. 1, Ch. 479, L. 1985; amd. Sec. 2, Ch. 270, L. 1987; amd. Sec. 3, Ch. 272, L. 1987; amd. Sec. 6, Ch. 671, L. 1989; amd. Sec. 1, Ch. 46, L. 1991; amd. Sec. 1, Ch. 263, L. 1991; amd. Sec. 1, Ch. 278, L. 1991; amd. Sec. 1, Ch. 395, L. 1997; amd. Sec. 1, Ch. 130, L. 1999; amd. Sec. 4, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 130 in (22)(a) in two places and in (22)(b) near end inserted reference to chapter 17 of Title 35; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 472 in introductory clause after "30-10-207" inserted "and 30-10-211"; in (2)(a)(i) near middle after "inc." deleted "(NASDAQ)"; in (13) in three places substituted references to security for references to stock and in two places substituted references to security holder for references to stockholder; in (15) in second sentence after "30-10-207" inserted "and 30-10-211"; and made minor changes in style. Amendment effective April 27, 1999.

Cross-References

Injunctions, 30-10-305.

30-10-106. Proof of exemption. In any proceeding under parts 1 through 3 of this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History: En. Sec. 25, Ch. 251, L. 1961; R.C.M. 1947, 15-2025.

30-10-107. Administration. (1) The administration of the provisions of parts 1 through 3 of this chapter must be under the general supervision and control of the state auditor, the ex officio securities commissioner. The commissioner may, from time to time, make, amend, and rescind rules and forms as necessary to carry out the provisions of parts 1 through 3 of this chapter. A rule or form may not be adopted unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports whenever practicable.

(2) It is unlawful for the commissioner or any of the commissioner's officers or employees to use for personal benefit any information filed with or obtained by the commissioner and not made public. The provisions of parts 1 through 3 of this chapter do not authorize the commissioner or any of the commissioner's officers or employees to disclose any information or the fact that an investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) The provisions of parts 1 through 3 of this chapter imposing liability do not apply to an act done or omitted in good faith in conformity with a rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding must be public.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements that are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders that have ever been entered under parts 1 through 3 of this chapter. The register must be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under rules the commissioner prescribes.

(6) Upon request and at a reasonable charge, the commissioner shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document that is a matter of public record. In a proceeding or prosecution under parts 1 through 3 of this chapter, a certified copy is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, the securities registration depository, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

(8) Except as specifically provided in this title, an order or notice may be given to a person by personal delivery or by mail addressed to that person at the person's last-recorded principal place of business on file at the commissioner's office. An order or notice that is mailed is considered to have been given at the time it is mailed.

History: En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963; R.C.M. 1947, 15-2024(1), (3) thru (7); amd. Sec. 8, Ch. 351, L. 1979; amd. Sec. 5, Ch. 322, L. 1983; amd. Sec. 3, Ch. 533, L. 1997; amd. Sec. 5, Ch. 416, L. 1999; amd. Sec. 5, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 416 at end of (4) after "public" deleted "unless the commissioner grants a request joined in by all the respondents that the hearing be conducted privately"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 472 in (7) near middle after "corporation" inserted "the securities registration depository"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Misleading filings, 30-10-302.

Unlawful representation concerning registration or exemption, 30-10-303.

Investigations and subpoenas, 30-10-304.

Injunctions, 30-10-305.

30-10-108 and 30-10-109 reserved.

30-10-110. Scope. (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not either party is then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance is communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) the publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation that is:

(i) not published in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(7) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as each sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

History: En. Sec. 1, Ch. 285, L. 1985; amd. Sec. 2, Ch. 269, L. 1987; amd. Sec. 136, Ch. 42, L. 1997; amd. Sec. 4, Ch. 533, L. 1997.

30-10-111 through 30-10-114 reserved.

30-10-115. Deposits to general fund. (1) All fees and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter, except for portfolio notice filing fees described in 30-10-209(1)(d), must be deposited in the general fund.

(2) All portfolio notice filing fees collected under 30-10-209(1)(d) and examination costs collected under 30-10-210 must be deposited in the state special revenue account to the credit of the state auditor's office. The funds allocated by this section to the state special revenue account may only be used to defray the expenses of the state auditor's office in discharging its administrative and

regulatory powers and duties in relation to portfolio notice filing and examinations. Any excess fees must be deposited in the general fund.

History: En. Sec. 2, Ch. 385, L. 1985; amd. Sec. 4, Ch. 351, L. 1989; amd. Sec. 1, Ch. 462, L. 1993; amd. Sec. 64, Ch. 51, L. 1999; amd. Sec. 6, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 51 in (1) near end and in (2) near beginning of first sentence and at end of second sentence after "portfolio" substituted "notice filing" for "registration". Amendment effective March 15, 1999.

Chapter 472 in (1) near beginning after "fees" deleted "examination charges"; and in (2) in first sentence after "30-10-209(1)(d)" inserted "and examination costs collected under 30-10-210" and in second sentence at end inserted "and examinations". Amendment effective October 1, 1999.

30-10-116. Repealed. Sec. 9, Ch. 351, L. 1989.

History: En. Sec. 3, Ch. 385, L. 1985.

30-10-117. Repealed. Sec. 9, Ch. 351, L. 1989.

History: En. Sec. 4, Ch. 385, L. 1985.

30-10-118. Repealed. Sec. 9, Ch. 351, L. 1989.

History: En. Sec. 5, Ch. 385, L. 1985.

Part 2

Registration

30-10-201. Registration and notice filing requirements of broker-dealers, salespersons, investment advisers, and investment adviser representatives. (1) It is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesperson to represent the broker-dealer or issuer in this state, except in transactions exempt under 30-10-105, unless the salesperson is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for a person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) the person is registered under parts 1 through 3 of this chapter;

(b) the person does not have a place of business in the state and the person's only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) federal covered advisers;

(iv) broker-dealers;

(v) banks;

(vi) trust companies;

(vii) savings and loan associations;

(viii) employee benefit plans with assets of not less than $1 million;

(ix) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(x) other institutional investors as designated by rule or order of the commissioner; or

(c) the person does not have a place of business in this state and during the preceding 12-month period, the person has not had more than five clients who are residents of this state, other than those clients specified in subsection (3)(b).

(4) Except for federal covered advisers whose only clients are clients listed in subsection (3)(b) or who meet the requirements of subsection (3)(c), it is unlawful

for a federal covered adviser to conduct advisory business in this state unless the federal covered adviser complies with the provisions of subsection (6)(b).

(5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30, chapter 10, parts 1 through 3, to employ an investment adviser representative unless the investment adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through 3.

(b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an investment adviser representative who maintains a place of business in this state unless the investment adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through 3.

(6) (a) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in the form that the commissioner prescribes and payment of the fee prescribed in 30-10-209.

(b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b) or who meet the requirements of subsection (3)(c), a federal covered adviser shall, prior to acting as a federal covered adviser in this state, submit a notice filing to the commissioner consisting of the fee prescribed in 30-10-209 and copies of any documents filed with the securities and exchange commission that the commissioner requires by rule or order. A notice filing is effective upon its receipt by the commissioner.

(7) The application must contain whatever information the commissioner requires. A registration application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn before the commissioner approves or denies the registration, without the express written consent of the commissioner.

(8) When the registration requirements are met, the commissioner shall make the registration effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn or terminated without the express written consent of the commissioner.

(9) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative or a notice filing by a federal covered adviser:

(a) is effective until December 31 following the registration or notice filing or any other time as the commissioner may by rule adopt; and

(b) may be renewed pursuant to subsection (11).

(10) (a) The registration of a salesperson is not effective during any period when the salesperson is not associated with an issuer or a registered broker-dealer specified in the application. When a salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson and the issuer or broker-dealer shall promptly notify the commissioner.

(b) The registration of an investment adviser representative is not effective during any period when the person is not associated with either an investment adviser registered under this act or a federal covered adviser with an effective notice filing who is specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner. When an investment adviser representative begins or terminates a connection with a federal covered adviser, the investment adviser representative shall promptly notify the commissioner.

(11) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative or notice filing for a federal covered adviser may be renewed by filing, prior to the expiration of the registration or notice filing, an

application containing information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration or notice filing, and payment of the fee prescribed by 30-10-209. A broker-dealer who is not a member of the national association of securities dealers, inc., is required to file a financial statement of the broker-dealer within 90 days of the end of the broker-dealer's fiscal year, except as provided in section 15 of the Securities Exchange Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(12) (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser, every registered broker-dealer and investment adviser shall make and keep accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner by rule or order. All required records of an investment adviser must be preserved for the period the commissioner prescribes by rule or order. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to reasonable periodic, special, or other examinations, within or outside this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(b) The commissioner may require investment advisers who are registered or required to be registered to furnish or disseminate certain information as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

(c) If information contained in any document filed with the commissioner is, or becomes, inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall promptly file a correcting amendment.

(13) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) has filed an application for registration under this section that, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative;

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (13) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (13), and the commissioner shall vacate any order when the deficiency has been corrected; or

(k) has failed to reasonably supervise the person's salespersons or employees or investment adviser representatives or employees to ensure their compliance with this act.

(14) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when registration became effective unless the proceeding is instituted within 30 days after the date on which the registration became effective.

(15) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(16) Upon the entry of the order under subsection (13), the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesperson or investment adviser representative, that it has been entered and of the reasons for the order and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification, the matter will be promptly set for hearing. If a hearing is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(17) If the commissioner finds that a registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(18) The commissioner may, after suspending or revoking registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative, impose a fine not to exceed $5,000 upon the broker-dealer, salesperson, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesperson, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the broker-dealer, salesperson, investment adviser, or

investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesperson, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(19) A sole proprietor registered as a broker-dealer or investment adviser who does not employ other salespersons or investment adviser representatives, other than the sole proprietor, is not required to register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser representative if the sole proprietor meets the examination requirements established by the commissioner by rule.

(20) A person who is subject to the provisions of this section and who has passed the general securities principal's examination is not required to also pass the uniform investment adviser law examination. The commissioner shall by rule provide for a form that a person who passes the general securities principal's examination shall file with the commissioner as a verification of having passed the examination unless the commissioner can verify electronically that the person has passed the exam.

History: En. Sec. 6, Ch. 251, L. 1961; amd. Sec. 1, Ch. 265, L. 1977; amd. Sec. 1, Ch. 275, L. 1977; R.C.M. 1947, 15-2006; amd. Sec. 4, Ch. 137, L. 1979; amd. Sec. 4, Ch. 351, L. 1979; amd. Sec. 1, Ch. 279, L. 1981; amd. Sec. 1, Ch. 407, L. 1985; amd. Sec. 4, Ch. 478, L. 1985; amd. Sec. 3, Ch. 269, L. 1987; amd. Sec. 4, Ch. 272, L. 1987; amd. Sec. 3, Ch. 249, L. 1989; amd. Sec. 2, Ch. 2, L. 1991; amd. Sec. 2, Ch. 162, L. 1993; amd. Sec. 1, Ch. 261, L. 1995; amd. Sec. 5, Ch. 533, L. 1997; amd. Sec. 7, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (4) near middle after "(3)(b)" inserted "or who meet the requirements of subsection (3)(c)"; in (6)(b) near beginning of first sentence after "(3)(b) or" inserted "who meet the requirements of subsection", near middle after "state" substituted "submit a notice filing to the commissioner consisting of" for "pay", and after "30-10-209 and" deleted "shall file with the commissioner" and inserted second sentence providing that a notice filing is effective upon receipt by the commissioner; in (9) at end of introductory clause inserted "or a notice filing by a federal covered adviser"; in (9)(a) after "registration" inserted "or notice filing"; in (10)(b) in first sentence after "associated with" inserted "either" and after "act" inserted "or a federal covered adviser with an effective notice filing"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Administration, 30-10-107.

Prohibited practices, 30-10-301.

Unlawful representation concerning registration or exemption, 30-10-303.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Effect of conviction on civil rights, 46-18-801.

30-10-202. Registration of securities. It is unlawful for any person to offer or sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless:

(1) the security is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter; or

(2) for a federal covered security, the security has been filed with the commissioner pursuant to 30-10-211 and the fee prescribed in 30-10-209 has been paid.

History: En. Sec. 7, Ch. 251, L. 1961; R.C.M. 1947, 15-2007; amd. Sec. 2, Ch. 279, L. 1981; amd. Sec. 6, Ch. 533, L. 1997.

Cross-References

Uniform Commercial Code — investment securities — registration, Title 30, ch. 8, part 4.

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

Civil liabilities, 30-10-307.

30-10-203 . Registration by notification. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under parts 1 through 3 of this chapter:

(a) any security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(i) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(ii) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:

(A) equal at least 5% of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within 30 days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or

(B) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for 3 full fiscal years, equal at least 5% of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if any security of the same class has ever been registered under parts 1 through 3 of this chapter or a predecessor law or the security being registered was originally issued pursuant to an exemption under parts 1 through 3 of this chapter or a predecessor law.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) a statement demonstrating eligibility for registration by notification;

(b) with respect to the issuer: its name, address, and form of organization, the state (or foreign jurisdiction) and the date of its organization, and the general character and location of its business;

(c) a description of the securities being registered;

(d) total amount of securities to be offered and amount of securities to be offered in this state;

(e) the price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any persons (other than as underwriting and selling discounts or commissions) and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value);

(f) names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) description of any security options outstanding or to be created in connection with the offering;

(h) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the United States securities and exchange commission;

(i) a copy of any offering circular or prospectus to be used in connection with the offering;

(j) in the case of any registration under subsection (1)(b) of this section relating to nonissuer distribution which does not also satisfy the conditions of subsection (1)(a) of this section, a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 2 years;

(k) a consent to service of process meeting the requirements of 30-10-208; and

(l) such other information as the commissioner may require.

(3) If no stop order is in effect and no proceeding is pending under 30-10-207, a registration statement by notification automatically becomes effective at noon the 10th business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

History: En. Sec. 8, Ch. 251, L. 1961; R.C.M. 1947, 15-2008; amd. Sec. 3, Ch. 279, L. 1981.

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-204. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) one copy of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date;

(h) a consent to service of process meeting the requirements of 30-10-208; and

(i) such other information as the commissioner may require.

(2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 business days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (3) of this section, the commissioner may enter a denial order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsections (2) and (3) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the denial order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective, the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under 30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

History: En. Sec. 9, Ch. 251, L. 1961; R.C.M. 1947, 15-2009; amd. Sec. 4, Ch. 279, L. 1981; amd. Sec. 5, Ch. 272, L. 1987; amd. Sec. 77, Ch. 370, L. 1987.

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-205. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by him as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries);

(c) with respect to any person not named in subsection (1)(b) of this section owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1)(b) of this section other than his occupation;

(d) with respect to every promoter not named in subsection (1)(b) of this section, if the issuer was organized within the past 3 years: the information specified in subsection (1)(b) of this section, any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;

(e) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions, and other promotional fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subsection (1)(b), (1)(c), (1)(d), (1)(e), or (1)(g) and by any person who holds or will hold 10% or more in the aggregate of any such options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission, a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(k) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(l) a specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(m) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(n) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(o) a consent to service of process meeting the requirements of 30-10-208; and

(p) such other information as the commissioner may require.

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

History: En. Sec. 10, Ch. 251, L. 1961; R.C.M. 1947, 15-2010; amd. Sec. 5, Ch. 279, L. 1981.

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that the following securities be deposited in escrow:

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in that stage, then this condition does not apply; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required, but may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. A registration must remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b). However, the registration must be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to the securities and must continue to be suspended so long as the proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesperson who offers or sells registered securities must be registered pursuant to 30-10-201.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities that are being offered and sold directly by or for the account of the issuer.

(5) A securities registration statement may not be withdrawn, whether or not the statement has become effective, without the express written consent of the commissioner.

History: En. Sec. 11, Ch. 251, L. 1961; amd. Sec. 1, Ch. 71, L. 1963; amd. Sec. 1, Ch. 150, L. 1977; R.C.M. 1947, 15-2011; amd. Sec. 6, Ch. 279, L. 1981; amd. Sec. 5, Ch. 478, L. 1985; amd. Sec. 1, Ch. 107, L. 1987; amd. Sec. 6, Ch. 272, L. 1987; amd. Sec. 3, Ch. 2, L. 1991; amd. Sec. 4, Ch. 162, L. 1993; amd. Sec. 7, Ch. 533, L. 1997.

Cross-References

Uniform Commercial Code — investment securities — registration, Title 30, ch. 8, part 4.

Administration, 30-10-107.

Misleading filings, 30-10-302.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-207. Denial, suspension, and revocation of registration of securities. (1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the order is in the public interest and:

(a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully imposed under parts 1 through 3 of this chapter has been willfully violated by:

(i) the person filing the registration statement;

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering, but:

(i) the commissioner may not institute a proceeding against an effective registration statement under this subsection (1)(c) more than 1 year from the date of the injunction relied on; and

(ii) may not enter an order under this subsection (1)(c) on the basis of an injunction entered under any other state law unless that order or injunction was based on facts that would currently constitute a ground for an order under this section;

(d) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) when a security is sought to be registered by notification, it is not eligible for registration by notification;

(g) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by 30-10-204(1)(g);

(h) the applicant or registrant has failed to pay the proper registration fee, but the commissioner may enter only a denial order under this subsection, and shall vacate any denial order when the deficiency has been corrected; or

(i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(2) The commissioner may not enter a suspension or revocation order against an effective registration statement on the basis of a fact or transaction known to the commissioner when the registration statement became effective.

(3) Upon the entry of an order under subsection (1), the commissioner shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons for the order and that, if requested by the issuer or registrant within 15 days after the receipt of the commissioner's notification, the matter will be set promptly for hearing. If a hearing is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

History: En. Sec. 12, Ch. 251, L. 1961; R.C.M. 1947, 15-2012; amd. Sec. 7, Ch. 272, L. 1987; amd. Sec. 8, Ch. 533, L. 1997.

Cross-References

Misleading filings, 30-10-302.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-208. Consent to service of process — manner of service. (1) Every applicant for registration as a broker-dealer, investment adviser, salesperson, or investment adviser representative under parts 1 through 3 of this chapter and every issuer which proposes to register and offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he prescribes, an irrevocable consent appointing the commissioner and his successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or its or his successor, executor, or administrator which arises under parts 1 through 3 of this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

(2) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(a) the plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at its or his last address on file with the commissioner; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

History: En. Sec. 15, Ch. 251, L. 1961; amd. Sec. 1, Ch. 105, L. 1963; R.C.M. 1947, 15-2015; amd. Sec. 4, Ch. 2, L. 1991; amd. Sec. 4, Ch. 162, L. 1993.

Cross-References

Service of process — alternative methods, Title 25, ch. 3, part 5.

Long-arm statutes, 25-3-601, 35-18-107.

30-10-209. Fees. The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of $200 for the first $100,000 of initial issue or portion of the first $100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum fee of $1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than $200 or more than $1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state, or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a portfolio notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The portfolio notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer. A salesperson who is dually registered as an investment adviser representative with a broker-dealer dually registered as an investment adviser is not required to pay the $50 fee to register as an investment adviser representative.

(c) For a federal covered adviser the fee is $200 for the initial notice filing and $200 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) Except for portfolio notice filing fees established in this section, all fees, examination charges, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund.

History: En. Sec. 16, Ch. 251, L. 1961; amd. Sec. 1, Ch. 242, L. 1977; R.C.M. 1947, 15-2016; amd. Sec. 1, Ch. 281, L. 1981; amd. Sec. 6, Ch. 322, L. 1983; amd. Sec. 1, Ch. 385, L. 1985; amd. Sec. 6, Ch. 478, L. 1985; amd. Sec. 4, Ch. 269, L. 1987; amd. Sec. 8, Ch. 272, L. 1987; amd. Sec. 5, Ch. 351, L. 1989; amd. Sec. 5, Ch. 2, L. 1991; amd. Sec. 4, Ch. 162, L. 1993; amd. Sec. 2, Ch. 462, L. 1993; amd. Sec. 2, Ch. 261, L. 1995; amd. Sec. 9, Ch. 533, L. 1997; amd. Sec. 65, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in (6) near beginning after "portfolio" substituted "notice filing" for "registration". Amendment effective March 15, 1999.

Cross-References

Administration, 30-10-107.

30-10-210. Examination costs. (1) An issuer, broker-dealer, or investment adviser who is examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of the commissioner's authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, which are necessarily incurred on account of the examination, upon presentation of a detailed account of the charges and expenses by the commissioner or pursuant to the commissioner's written authorization; however, reimbursement of expenses may not be required for routine examinations performed in connection with an application for registration. A person may not pay and an examiner may not accept additional emolument on account of an examination.

(2) The commissioner shall deposit examination costs collected under this section in the special revenue account provided for in 30-10-115. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If an issuer, broker-dealer, or investment adviser fails to pay the charges and expenses referred to in subsection (1), the charges and expenses must be paid out of the funds of the commissioner in the same manner as other disbursements of those funds. The amount paid is a first lien upon all of the assets and property in this state of the issuer, broker-dealer, or investment adviser and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of the issuer, broker-dealer, or investment adviser to pay the charges and expenses also works a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

History: En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963; R.C.M. 1947, 15-2024(2); amd. Sec. 5, Ch. 351, L. 1979; amd. Sec. 7, Ch. 279, L. 1981; amd. Sec. 4, Ch. 249, L. 1989; amd. Sec. 8, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (2) in first sentence after "shall" substituted "deposit examination costs collected under this section in the special revenue account provided for in 30-10-115" for "pay to the state treasurer to the credit of the general fund all moneys received hereunder"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Registration of broker-dealers, salespeople, and investment advisers, 30-10-201.

Investigations and subpoenas, 30-10-304.

30-10-211. Federal covered securities. (1) The commissioner may require an issuer to file any or all of the following documents with respect to a federal covered security provided for in section 18(b)(2) of the Securities Act of 1933:

(a) documents that are part of a current federal registration statement filed with the securities and exchange commission or amendments to a current registration statement filed with the securities and exchange commission;

(b) a consent to the service of process signed by the issuer and payment of the fee required in 30-10-209; and

(c) annual or periodic reports of the value of the federal covered securities offered or sold in this state.

(2) The commissioner may require the issuer of a federal covered security under 18(b)(4)(D) of the Securities Act of 1933 to file within 15 days after the first sale in this state a notice on a form prescribed by the commissioner and a consent to service of process and may require the issuer to pay the notice filing fee prescribed in 30-10-209.

(3) The commissioner may require the filing of any document filed with the securities and exchange commission under the Securities Act of 1933, with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed in 30-10-209.

(4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal covered security if the commissioner finds that the order is in the public interest and there is a failure to comply with any requirement of this section.

(5) The commissioner may waive any of the provisions of this section.

History: En. Sec. 12, Ch. 533, L. 1997.

Part 3

Offenses and Penalties

30-10-301. Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:

(i) to employ any device, scheme, or artifice to defraud the other person;

(ii) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon the other person; or

(iii) without disclosing to the client in writing before the completion of the transaction the capacity in which the person is acting and obtaining the consent of the client to the transaction:

(A) acting as principal for the person's own account, to knowingly sell any security to or purchase any security from a client; or

(B) acting as agent for a person other than the client, to knowingly effect the sale or purchase of any security for the account of the client.

(b) The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to the transaction.

(3) In the solicitation of advisory clients, it is unlawful for a person to:

(a) make a false statement of a material fact; or

(b) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made.

(4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment adviser who is registered or required to be registered to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(a) the investment adviser may not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) an assignment of the contract may not be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(5) Subsection (4)(a) does not prohibit an investment advisory contract that provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, an assignment of an investment advisory contract is not considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(6) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client if:

(a) the commissioner by rule prohibits custody; or

(b) in the absence of rule, the investment adviser fails to notify the commissioner that the investment adviser has or may have custody.

History: En. Sec. 5, Ch. 251, L. 1961; R.C.M. 1947, 15-2005; amd. Sec. 1, Ch. 280, L. 1981; amd. Sec. 9, Ch. 272, L. 1987; amd. Sec. 10, Ch. 533, L. 1997.

Cross-References

Registration of broker-dealers, salespeople, and investment advisers, 30-10-201.

30-10-302. Misleading filings. It is unlawful for any person to knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under parts 1 through 3 of this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

History: **En. Sec. 17, Ch. 251, L. 1961; R.C.M. 1947, 15-2017.**

Cross-References

Administration, 30-10-107.

Examination costs, 30-10-210.

Criminal liabilities, 30-10-306.

30-10-303. Unlawful representation concerning registration or exemption. (1) The fact that an application for registration under 30-10-201(6), a notice filing under 30-10-211, or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed or the fact that a person or security is effectively registered or a complete notice filing has been made does not constitute a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading.

(2) The fact that an application for registration or a notice filing has been filed or a person or security is effectively registered or a complete notice filing has been made as provided in subsection (1) or the fact that an exemption or exception is available for a security or a transaction does not mean that the commissioner has passed in any way upon the merits of, qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.

History: **En. Sec. 18, Ch. 251, L. 1961; R.C.M. 1947, 15-2018; amd. Sec. 6, Ch. 351, L. 1979; amd. Sec. 11, Ch. 533, L. 1997.**

30-10-304. Investigations and subpoenas. (1) The commissioner may:

(a) make public or private investigations or examinations within or outside this state as the commissioner considers necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order under this chapter or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms under this chapter;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order under this chapter.

(2) (a) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

(b) The commissioner may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Securities Act of Montana if the activities had occurred in this state.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring the person to appear before the commissioner or the officer designated by the commissioner to produce documentary evidence if ordered or to give evidence concerning the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) A person is not excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena

of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. However, testimony or evidence that is compelled following a claim of privilege against self-incrimination or any information directly or indirectly derived from the testimony or evidence may not be used against the witness in any criminal case. This section does not prohibit the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in the commissioner's sole discretion, that the ends of justice would be served. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(5) The office of the securities commissioner is a criminal justice agency as defined in 44-5-103.

History: En. Sec. 19, Ch. 251, L. 1961; R.C.M. 1947, 15-2019; amd. Sec. 1, Ch. 577, L. 1983; amd. Sec. 10, Ch. 272, L. 1987; amd. Sec. 1, Ch. 107, L. 1989; amd. Sec. 1, Ch. 540, L. 1993.

Cross-References

Subpoenas and witnesses, Title 26, Ch. 2
Examination costs, 30-10-210.
Criminal liabilities, 30-10-306.
Perjury, 45-7-201.

30-10-305. Injunctions and other remedies — limitations on actions. (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order under this chapter, the commissioner may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that:

(i) remains in effect until 10 days after the hearing examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(ii) becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, the commissioner is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against the person under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the

amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by the commissioner or the commissioner's staff of the facts constituting the violation.

(c) An action may not be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter unless it is brought within 5 years after the transaction on which the action is based.

History: En. Sec. 20, Ch. 251, L. 1961; R.C.M. 1947, 15-2020; amd. Sec. 7, Ch. 351, L. 1979; amd. Sec. 2, Ch. 407, L. 1985; amd. Sec. 7, Ch. 478, L. 1985; amd. Sec. 1, Ch. 231, L. 1987; amd. Sec. 5, Ch. 249, L. 1989; amd. Sec. 2, Ch. 540, L. 1993.

Cross-References

Injunctions, Title 27, Ch. 19.

Administration, 30-10-107.

30-10-306. Criminal liabilities. (1) Any person who willfully violates any provision of parts 1 through 3 of this chapter except 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect shall upon conviction be fined not more than $5,000 or imprisoned not more than 10 years, or both; however, in the event the person so convicted has been previously convicted of a felony in any way involving securities, imprisonment hereunder for not less than 1 year shall be mandatory. No indictment or information may be returned under parts 1 through 3 of this chapter more than 8 years after the alleged violation; however, the time limitation period may be extended allowing commencement of a prosecution within 1 year after the date the commissioner or other prosecuting officer becomes aware of the violation.

(2) The commissioner may refer such evidence as may be available concerning violations of parts 1 through 3 of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under parts 1 through 3 of this chapter.

(3) Nothing in parts 1 through 3 of this chapter limits the power of the state to punish any person for any conduct which constitutes a crime.

History: En. Sec. 21, Ch. 251, L. 1961; R.C.M. 1947, 15-2021; amd. Sec. 1, Ch. 394, L. 1981.

Cross-References

Registration of broker-dealers, salespeople, and investment advisers, 30-10-201.

Denial, suspension, and revocation of registration of securities, 30-10-207.

30-10-307. Civil liabilities — limitations on actions. (1) Any person who offers or sells a security in violation of 30-10-202 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 10% per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(a) the value of the security when the buyer disposed of it; and

(b) interest at 10% per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesperson who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at 10% per annum from the date of payment, less the amount of any income received on the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 10% per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest.

(5) (a) No action may be maintained under this section to enforce any liability founded on a violation of 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) No action may be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 2 years after discovery of the fraud or misrepresentation on which the liability is founded or after such discovery should have been made by the exercise of reasonable diligence.

(c) In no event may an action be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 5 years after the transaction on which the action is based.

History: En. Sec. 22, Ch. 251, L. 1961; amd. Sec. 1, Ch. 213, L. 1967; R.C.M. 1947, 15-2022; amd. Sec. 2, Ch. 280, L. 1981; amd. Sec. 2, Ch. 231, L. 1987; amd. Sec. 11, Ch. 272, L. 1987; amd. Sec. 4, Ch. 162, L. 1993.

Cross-References

Registration by notification, 30-10-203.

Registration by coordination, 30-10-204.

30-10-308. Judicial review of orders. Any person aggrieved by a final order of the commissioner may obtain a review of the order in any court of competent jurisdiction by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by creditable evidence, are conclusive, unless appealed from. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the taking of additional evidence in such manner and upon such conditions as the court may consider proper. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

History: **En. Sec. 23, Ch. 251, L. 1961; R.C.M. 1947, 15-2023.**

Cross-References

Administration, 30-10-107.

30-10-309. Securities restitution. (1) The commissioner may, after conducting a hearing pursuant to 30-10-305, require a person found to have committed a violation of 30-10-301 to make restitution for all financial losses sustained by any person as a result of the violation. The commissioner may further require a person found to have violated 30-10-301 to pay 10% annual interest on the amount of restitution from the date of the violation, reasonable attorney fees, and costs associated with bringing the administrative action.

(2) An amount required to be paid under this section is in addition to all other penalties imposed by law. If a person fails to pay an amount referred to in this section, the amount required to be paid is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and remitted to the person ordered to receive restitution.

(3) The commissioner or a person awarded restitution may bring suit in a court of competent jurisdiction to recover the sums awarded, attorney fees, and costs incurred in obtaining a judgment.

(4) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

History: **En. Sec. 4, Ch. 390, L. 1997.**

30-10-310. Reporting requirements. (1) A broker-dealer, investment adviser, investment adviser representative, or other person who has reason to believe fraud has occurred shall report the suspected fraud to the commissioner within 60 days of discovery of the occurrence.

(2) A broker-dealer shall make complete disclosure of all employment-related information required to be reported to the national association of securities dealers pursuant to rules and related explanatory materials of that association.

(3) A broker-dealer, investment adviser, investment adviser representative, or other person is not liable for any civil claim, including counterclaims, third-party claims, or cross-claims, related to reporting or providing information or otherwise cooperating with an investigation of fraud under this chapter unless the complainant shows by clear and convincing evidence that:

(a) the party knew at the time that the statement was made that the statement was false in any material respect; or

(b) the party acted in reckless disregard as to the statement's truth or falsity.

History: **En. Sec. 5, Ch. 390, L. 1997; amd. Sec. 1, Ch. 267, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 267 inserted (2) concerning disclosure of information required by national association; in (3) at beginning deleted "In the absence of malice", near middle substituted "is not liable for any civil claim, including counterclaims, third-party claims, or cross-claims, related to" for "may not be subjected to civil liability", and at end inserted final clause relating to clear and convincing evidence; inserted (3)(a) concerning knowing false statement; inserted (3)(b) concerning reckless disregard concerning statement; and made minor changes in style. Amendment effective October 1, 1999.

30-10-311 through 30-10-314 reserved.

30-10-315. Requirements for securities fraud actions — definition. (1) In any private action arising under this part, if the plaintiff alleges that the defendant made an untrue statement or omitted a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, the complaint must specify each statement alleged to have been misleading and the reason or reasons why the statement is misleading. If an allegation regarding the statement or omission is made on information and belief, the complaint must state with particularity all facts on which that belief is based.

(2) In any private action arising under this part in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint must, with respect to each act or omission alleged to violate this part, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.

(3) In any private action arising under this part, the court shall on the motion of any defendant, dismiss the complaint if the requirements of subsections (1) and (2) are not met.

(4) (a) In any private action arising under this part, all discovery and other proceedings must be stayed during the pendency of any motion to dismiss unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(b) During the pendency of any stay of discovery pursuant to this subsection (4), unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of the party and that are relevant to the allegations as if they were the subject of a continuing request for production of documents from an opposing party under the Montana Rules of Civil Procedure.

(5) A party aggrieved by the willful failure of an opposing party to comply with subsection (4) may apply to the court for an order awarding appropriate sanctions.

(6) In any private action arising under this part, the plaintiff has the burden of proving that the act or omission of the defendant alleged to violate this title caused the loss for which the plaintiff seeks to recover damages.

(7) As used in 30-10-316 through 30-10-323 and this section, "private action arising under this part" means an action against a person referred to in 30-10-319(2).

History: En. Sec. 1, Ch. 468, L. 1997.

30-10-316. Sanctions. (1) In any private action arising under this part, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11 of the Montana Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

(2) If the court makes a finding under subsection (1) that a party or attorney violated any requirement of Rule 11 of the Montana Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court shall impose sanctions on the party or attorney in accordance with Rule 11. Prior to making a finding that any party or attorney has violated Rule 11, the court shall give the party or attorney notice and an opportunity to respond.

(3) (a) Subject to subsections (3)(b) and (3)(c), for the purposes of subsection (2), the court shall adopt a presumption that the appropriate sanction:

(i) for failure of any responsive pleading or dispositive motion to comply with any requirement of Rule 11 is an award to the opposing party of the reasonable attorney fees and other expenses incurred as a direct result of the violation; and

(ii) for substantial failure of any complaint to comply with any requirement of Rule 11 is an award to the opposing party of the reasonable attorney fees and other expenses incurred in the action.

(b) The presumption described in subsection (3)(a) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that:

(i) the award of attorney fees and other expenses will impose an unreasonable burden on that party or attorney and would be unjust and the failure to make an award would not impose a greater burden on the party in whose favor sanctions are to be imposed; or

(ii) the violation of Rule 11 was de minimis.

(c) If the party or attorney against whom sanctions are to be imposed meets its burden under subsection (3)(b), the court shall award the sanctions that the court considers appropriate pursuant to Rule 11.

History: En. Sec. 2, Ch. 468, L. 1997.

30-10-317. Defendant's right to written interrogatories. In any private action arising under this part in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each defendant's state of mind at the time the alleged violation occurred.

History: En. Sec. 3, Ch. 468, L. 1997.

30-10-318. Limitation on damages. (1) The provisions of this section limit any damages otherwise available under this part.

(2) Except as provided in subsection (3), in any private action arising under this part in which the plaintiff seeks to establish damages by reference to the market price of a security that is traded in a national securities market, the award of damages to the plaintiff may not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.

(3) In any private action arising under this part in which the plaintiff seeks to establish damages by reference to the market price of a security that is traded on a national securities market, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in subsection (2), the plaintiff's damages may not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.

(4) For purposes of this section, the mean trading price of a security must be an average of the daily trading price of that security, determined as of the close of the market each day during the 90-day period referred to in subsection (2).

History: En. Sec. 4, Ch. 468, L. 1997.

30-10-319. Applicability of safe harbor for forward-looking statements. (1) For the purposes of this section, the following definitions apply:

(a) "Forward-looking statement" means:

(i) a statement containing a projection of revenue; income per share, including income loss; earnings per share, including earnings loss; capital expenditures; dividends; capital structure; or other financial items;

(ii) a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

(iii) a statement of future economic performance, including any statement contained in a discussion and analysis of financial condition by the management or in the results of operations;

(iv) any statement of the assumptions underlying or relating to any statement described in subsection (1)(a)(i), (1)(a)(ii), or (1)(a)(iii);

(v) any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer; or

(vi) a statement containing a projection or estimate of other items as may be specified by rule or regulation of the commissioner.

(b) "Going private transaction" has the meaning given that term under the rules or regulations of the United States securities and exchange commission issued pursuant to section 13(e) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(e).

(c) "Investment company" has the same meaning as in section 3(a) of the federal Investment Company Act of 1940, 15 U.S.C. 80a-3(a).

(d) (i) "Issuer" has the meaning provided in 30-10-103.

(ii) The term does not include a broker-dealer as defined in 30-10-103.

(e) "Penny stock" has the same meaning as in section 3(a)(51) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(51), and the rules and regulations or orders issued pursuant to that section.

(f) "Person acting on behalf of an issuer" means an officer, director, or employee of the issuer.

(g) The terms "blank check company", "direct participation investment program", "executive officer of an entity", "limited liability company", "partnership", and "rollup transaction" have the meanings given those terms by rule or regulation of the commissioner.

(2) This section applies only to a forward-looking statement made by:

(a) an issuer that, at the time that the statement is made, is subject to the reporting requirements of section (13)(a) or (15)(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) or 15 U.S.C. 78o(d);

(b) a person acting on behalf of an issuer subject to the provisions of subsection (2)(a);

(c) an outside reviewer retained by an issuer subject to the provisions of subsection (2)(a) making a statement on behalf of that issuer; or

(d) an underwriter, with respect to information provided by an issuer subject to the provisions of subsection (2)(a) or information derived from information provided by that issuer.

(3) Except to the extent otherwise specifically provided by rule, regulation, or order of the securities and exchange commission, this section does not apply to a forward-looking statement:

(a) that is made with respect to the business or operations of the issuer, if the issuer:

(i) during the 3-year period preceding the date on which the statement was first made:

(A) was convicted of any felony or misdemeanor described in section 15(b)(4)(B)(i) through (iv) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(B), or was convicted under 30-10-306;

(B) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that:

(I) prohibits future violations of the antifraud provisions of state or federal securities laws;

(II) requires that the issuer cease and desist from violating the antifraud provisions of state or federal securities laws; or

(III) determines that the issuer violated the antifraud provisions of state or federal securities laws;

(ii) makes the forward-looking statement in connection with an offering of securities by a blank check company;

(iii) issues penny stock;

(iv) makes the forward-looking statement in connection with a rollup transaction; or

(v) makes the forward-looking statement in connection with a going private transaction; or

(b) that is:

(i) included in a financial statement prepared in accordance with generally accepted accounting principles;

(ii) contained in a registration statement of, or otherwise issued by, an investment company;

(iii) made in connection with a tender offer;

(iv) made in connection with an initial public offering;

(v) made in connection with an offering by, or relating to the operations of, a partnership, a limited liability company, or a direct participation investment program; or

(vi) made in a disclosure of beneficial ownership in a report required to be filed with the United States securities and exchange commission pursuant to section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(d).

(4) (a) Except as provided in subsection (3), in any private action arising under this part that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (2) is not liable with respect to any forward-looking statement, whether written or oral, if and to the extent that:

(i) the forward-looking statement is identified as a forward-looking statement and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement or is immaterial; or

(ii) the plaintiff fails to prove that the forward-looking statement:

(A) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(B) if made by a business entity, was made by or with the approval of an executive officer of that entity and made or approved by that officer with actual knowledge by that officer that the statement was false or misleading.

(b) In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) or 15 U.S.C. 78o(d) or by a person acting on behalf of the issuer, the requirement in subsection (4)(a) must be considered satisfied under the following circumstances:

(i) if the oral forward-looking statement is accompanied by a cautionary statement that the particular oral statement is a forward-looking statement and that the actual results could differ materially from those projected in the forward-looking statement; and

(ii) if the oral forward-looking statement is accompanied by an oral statement that additional information concerning factors that could cause actual results to differ materially from those in the forward-looking statement is contained in a readily available written document or portion of the written document;

(iii) if the accompanying oral statement referred to in subsection (4)(b)(ii) identifies the document or portion of the document that contains the additional information about those factors relating to the forward-looking statement; and

(iv) if the information contained in that written document is a cautionary statement that satisfies the standard established in subsection (4)(a).

(c) Any document filed with the commissioner or with the securities and exchange commission or generally disseminated must be considered to be readily available for purposes of this section.

(5) This section does not impose upon any person a duty to update a forward-looking statement.

(6) On any motion to dismiss based on subsection (4)(a), the court shall consider:

(a) any statement cited in the complaint; and

(b) any cautionary statement accompanying the forward-looking statement that is not subject to material dispute and that is cited by the defendant.

(7) In any private action arising under this part, the court shall stay discovery, other than discovery that is specifically directed to the applicability of the exemption provided for in this section, during the pendency of any motion by a defendant for summary judgment that is based on the grounds that:

(a) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

(b) the exemption provided for in this section precludes a claim for relief.

History: En. Sec. 5, Ch. 468, L. 1997.

30-10-320. Prohibition of referral fees. A broker, dealer, or person associated with a broker or dealer, may not solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action under this part or under the Securities Act of 1933, 15 U.S.C. 77a, et seq.

History: En. Sec. 6, Ch. 468, L. 1997.

30-10-321. Prosecution of persons aiding violations. For purposes of any action brought by the commissioner under 30-10-304, 30-10-305, or 30-10-306, for violations of 30-10-301 through 30-10-303, any person that knowingly provides substantial assistance to another person in violation of a provision of this part or of any rule or regulation issued under this part must be considered to be in violation of that provision to the same extent as the person to whom the assistance is provided.

History: En. Sec. 7, Ch. 468, L. 1997.

30-10-322. Loss causation. In any private action arising under this part, if any portion or all of the amount recoverable represents other than the depreciation in value of the subject security resulting from a part of the prospectus or oral communication not being true or omitting to state a material fact required to be stated in the prospectus or oral communication or necessary to make the statement not misleading, then that portion or amount is not recoverable with respect to the liability of that person.

History: En. Sec. 8, Ch. 468, L. 1997.

30-10-323. Construction. Sections 30-10-315 through 30-10-322 may not be considered to create or ratify any implied private right of action or to prevent the commissioner, by rule or regulation, from restricting or otherwise regulating private actions under Montana securities laws.

History: En. Sec. 9, Ch. 468, L. 1997.

30-10-324. Definitions. As used in 30-10-324 through 30-10-326, the following definitions apply:

(1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) (a) "Multilevel distribution company" means a person that:

(i) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;

(ii) may recruit other participants in the company; and

(iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(b) The term does not include an insurance producer, real estate broker, or salesperson or an investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.

(4) "Participant" means a person involved in a sales plan or operation.

(5) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme does not include a sales plan or operation that:

(i) does not compensate a participant solely for obtaining the participation of other persons in the sales plan or operation;

(ii) subject to the provisions of subsection (6)(b)(vi), provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;

(iii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iv) is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

(v) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation plan; and

(C) provides that if the person cancels participation within the time provided and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(vi) (A) provides for, upon the request of a participant deciding to terminate participation in the sales plan or operation, the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (6)(b)(vi) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase.

History: En. Sec. 1, Ch. 74, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

30-10-325. Operating pyramid promotional scheme unlawful. (1) A person may not conduct or promote or cause to be conducted or promoted a pyramid promotional scheme.

(2) A person who violates the provisions of subsection (1) shall be fined an amount not more than $10,000 or be imprisoned for not more than 10 years, or both.

History: En. Sec. 2, Ch. 74, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

30-10-326. Notice of activity — consent to service. (1) A multilevel distribution company with a participant that is a resident of this state shall file annually with the securities commissioner on a form prescribed by the commissioner and designating the commissioner as its agent for service of process for any alleged violation of 30-10-325. Compliance with this section may not by itself subject a company to the provisions of any other statute of this state or to any taxes, licenses, or fees.

(2) The commissioner may require a multilevel distribution company to disclose only the following substantive information:

(a) the names, addresses, and titles of the multilevel distribution company's officers, directors, and trustees;

(b) the corporate name; the headquarters street, mailing, and e-mail addresses, as well as telephone and telefax numbers; and the state of domicile and state of incorporation of the multilevel distribution company; and

(c) a detailed description of the levels of distribution in the multilevel distribution company, the manner of compensating participants, and the compensation structure of the marketing plan.

(3) This section does not preclude the commissioner from obtaining information required of participants during the course of an investigation or proceeding initiated under this chapter.

History: En. Sec. 3, Ch. 74, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Part 4

Fiduciary Security Transfers (Repealed. Sec. 88, Ch. 536, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

30-10-401. En. Sec. 11, Ch. 101, L. 1963; R.C.M. 1947, 15-662.

30-10-402. En. Sec. 1, Ch. 101, L. 1963; R.C.M. 1947, 15-652.

30-10-403. En. Sec. 2, Ch. 101, L. 1963; R.C.M. 1947, 15-653.

30-10-404. En. Sec. 3, Ch. 101, L. 1963; R.C.M. 1947, 15-654.

30-10-405. En. Sec. 4, Ch. 101, L. 1963; R.C.M. 1947, 15-655.

30-10-406. En. Sec. 5, Ch. 101, L. 1963; R.C.M. 1947, 15-656.

30-10-407. En. Sec. 6, Ch. 101, L. 1963; R.C.M. 1947, 15-657.

30-10-408. En. Sec. 7, Ch. 101, L. 1963; R.C.M. 1947, 15-658.

30-10-409. En. Sec. 8, Ch. 101, L. 1963; R.C.M. 1947, 15-659.

30-10-410. En. Sec. 9, Ch. 101, L. 1963; R.C.M. 1947, 15-660.

30-10-411. En. Sec. 10, Ch. 101, L. 1963; R.C.M. 1947, 15-661.

Parts 5 through 8 reserved

Part 9

Montana Living Trust Act

30-10-901. Short title. This part may be cited as the "Montana Living Trust Act".

History: En. Sec. 1, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-902. Purpose. The purpose of this part is to regulate the marketing and sale of living trusts in Montana and to provide civil remedies for fraudulent and deceptive sales practices.

History: En. Sec. 2, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-903. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) (a) "Living trust" means either an irrevocable or a revocable inter vivos trust.

(b) The term does not include an account with a POD designation, as defined in 72-6-201.

(2) "Offer" or "offer to sell" includes an attempt or offer to dispose of a living trust for value or a solicitation of an offer to buy a living trust for value.

(3) "Person" means an individual, corporation, partnership, association, joint-stock company, or unincorporated organization.

(4) "Sale" includes each contract of sale, contract to sell, or disposition of a living trust for value.

History: En. Sec. 3, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-904. Licensure — exemption. (1) A person may not offer or sell a living trust in this state unless the person:

(a) is registered as an investment adviser or investment adviser representative under 30-10-201; and

(b) has applied for and been granted a license under this section.

(2) Subsection (1) does not apply to the preparation, acceptance, or discussion of a living trust for an individual client, when the preparation of the living trust is based upon the client's particular financial circumstance, by:

(a) an attorney licensed to practice law in this state;

(b) an employee of a state or national bank with trust powers or a trust corporation; or

(c) a person on behalf of an educational, charitable, or religious institution, when done in conjunction with an attorney licensed to practice law in this state.

(3) In any proceeding under this part, the burden of proving that a person preparing a living trust is excluded from the license requirement is on the person claiming the exclusion.

(4) A person may apply for a license to offer and sell living trusts by filing an application in the form that the state auditor prescribes and paying the fee required in subsection (5).

(5) The state auditor shall issue a license to offer or sell a living trust to a person who:

(a) is registered as an investment adviser or investment adviser representative under 30-10-201;

(b) correctly files an application for the license with the state auditor; and

(c) pays an application fee in the same amount as the amount paid by the person for original registration as an investment adviser or investment adviser representative.

(6) The state auditor may issue an order denying, suspending, or revoking the effectiveness of any pending application or approved license if any provision of this part or any rule, order, or condition imposed by this part has been willfully violated in connection with the offer or sale of a living trust by a person involved in the assembling, drafting, executing, offering, or selling of the living trust.

(7) The license is effective until December 31 following issuance of the license or until another date that the state auditor establishes by rule unless the license is suspended or revoked.

(8) A person may renew a license annually, prior to the termination date of the license, if the person:

(a) is registered as an investment adviser or investment adviser representative under 30-10-201; and

(b) pays a renewal fee in the same amount as the amount paid by the person for annual renewal as an investment adviser or investment adviser representative.

History: En. Sec. 4, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-905. Administration. (1) The administration of the provisions of this part is under the general supervision and control of the state auditor. The state auditor shall adopt forms and rules necessary to implement this part.

(2) A document is filed when it is received by the state auditor. The state auditor shall keep a register of all applications for licenses to offer and sell living trusts in this state. The register must be open for public inspection. The information contained in or filed with an application must be made available to the public.

(3) Upon request and at a reasonable charge, the state auditor shall furnish to any person photostatic or other copies, certified under the seal of office if

requested, of any entry in the register or any document filed with the state auditor that is a matter of public record. In any proceeding or prosecution under this part, a certified copy is prima facie evidence of the contents of the entry or document certified.

(4) A person who has received a license to offer and sell living trusts in this state shall make and keep accounts and other records as required by the state auditor. The records are subject at any time to reasonable periodic, special, or other examination, within or outside this state, by representatives of the state auditor if necessary to protect the public interest or for the protection of consumers.

History: En. Sec. 5, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-906. Scope. This part applies to any person who sells or offers to sell a living trust in this state or when an offer to buy a living trust is made and accepted in this state. An offer to sell or buy is made in this state, whether or not either party is then present in this state, if the offer either originates in this state or is directed by the offeror to this state and is received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

History: En. Sec. 6, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-907. Fines and fees — deposit to general fund. All fines and fees received by the state auditor pursuant to this part must be deposited in the general fund. If, in any year, the fines and fees do not cover the cost of administering this part, the state auditor may increase the fees by rule to the extent necessary to cover the expected costs of administering this part for the following year.

History: En. Sec. 7, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-908. Consent to service of process — manner of service. (1) An applicant under this part shall file with the state auditor, in the form the state auditor prescribes, an irrevocable consent appointing the state auditor as the applicant's agent for the purpose of receiving service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator that arises under this part or any rule or order adopted or issued pursuant to this part. Service on the state auditor has the same force and validity as if served personally on the applicant or the applicant's successor, executor, or administrator.

(2) Service may be made by leaving a copy of the process in the office of the state auditor, but service is not effective unless:

(a) the plaintiff sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the state auditor; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or at a later date as the court allows.

History: En. Sec. 8, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-909 . Fraudulent and other prohibited practices. (1) It is unlawful for a person, in connection with the offer or sale of any living trust, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact;

(c) fail to state a material fact necessary to render any statement made not misleading; or

(d) engage in any other act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for a person to sell a living trust to a person for whom a living trust is not suitable.

History: En. Sec. 9, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-910. Misleading filings. It is unlawful for a person to knowingly make or cause to be made a materially false or misleading statement in any document filed with the state auditor or in any proceeding under this part.

History: En. Sec. 10, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-911. Unlawful representation concerning approval of application. The fact that an application for a license to offer or sell living trusts has been filed or approved in this state does not constitute a finding by the state auditor that any document filed under this part is true, complete, and not misleading. The state auditor's approval of an application for a license to offer or sell a living trust may not be construed as a determination of the merits of any transaction or a recommendation of any person or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.

History: En. Sec. 11, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-912. Investigations and subpoenas. (1) The state auditor may:

(a) issue subpoenas, compel testimony, and conduct hearings as provided in Title 2, chapter 4, parts 1 and 6;

(b) make public or private investigations or examinations within or outside this state that the state auditor considers necessary to:

(i) determine whether a license to sell or offer to sell living trusts should be granted, denied, or revoked;

(ii) determine whether a person has violated or is about to violate a provision of this part or any rule or order adopted or issued pursuant to this part; or

(iii) aid in the enforcement of this part or in the prescribing of rules and forms under this part;

(c) require or permit a person to file a statement in writing, under oath or otherwise as the state auditor may determine, relating to the facts and circumstances concerning a matter to be investigated; and

(d) publish information concerning a violation of this part or any rule or order adopted or issued pursuant to this part.

(2) A person is not excused from attending a hearing or from producing a document or record before the state auditor or in obedience to a subpoena of the state auditor or any officer designated by the state auditor or pursuant to any

proceeding instituted by the state auditor on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. This section does not prohibit the state auditor from granting immunity from prosecution for any transaction, matter, or thing concerning which a witness is compelled to testify if the state auditor determines, in the state auditor's discretion, that justice would be served. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

History: En. Sec. 12, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-913. Injunctions and other remedies — limitations on actions — criminal sanctions. (1) If it appears to the state auditor that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this part, the state auditor may:

(a) issue an order directing the person to cease and desist from committing or continuing the act or practice until a hearing can be held pursuant to Title 2, chapter 4, part 6; or

(b) without issuing an order to cease and desist, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with this part or any rule or order adopted or issued pursuant to this part. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The state auditor may not be required to post a bond.

(2) A final judgment or decree under subsection (1)(b) determining that a person has violated this part in an action brought by the state auditor for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in any action maintained pursuant to 30-10-915.

(3) The state auditor may, after giving reasonable notice and an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, impose a fine not to exceed $10,000 for each violation upon a person found to have engaged in an act or practice constituting a violation of any provision of this part or any rule or order adopted or issued pursuant to this part. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the state auditor in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to Title 2, chapter 4, part 6. If a person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the state auditor and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under this part.

(4) An administrative or civil action may not be maintained by the state auditor under this section to enforce a liability founded on a violation of this part or any rule or order adopted or issued pursuant to this part unless it is brought within 2 years after discovery by the state auditor of the facts constituting the violation.

(5) Any person who purposely or knowingly violates any provision of this part or who purposely or knowingly violates any rule or order adopted or issued pursuant to this part shall upon conviction be fined not more than $10,000 or imprisoned for a term of not more than 10 years, or both. An indictment or information may not be returned under this part more than 8 years after the alleged violation. However, the time limitation period may be extended to allow commencement of a

prosecution within 1 year after the date the state auditor or other prosecuting officer becomes aware of the violation on which the action is based.

(6) The state auditor may refer evidence concerning violations of this part or of any rule or order adopted or issued pursuant to this part to the attorney general or proper county attorney, who may, with or without the referral, institute the appropriate criminal proceedings under this part.

(7) Nothing in this part limits the power of the state to punish a person for any conduct that constitutes a crime.

History: En. Sec. 13, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-914. Judicial review of orders. A person aggrieved by a final order of the state auditor may obtain judicial review of the order as provided in Title 2, chapter 4, part 7.

History: En. Sec. 14, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

30-10-915. Civil liabilities — limitations on actions. (1) A person who offers or sells a living trust in violation of 30-10-904 or offers or sells a living trust by means of fraud or misrepresentation is liable to the person buying the living trust, who may sue either at law or in equity to recover the consideration paid for the living trust, together with interest, at 10% a year from the date of payment, costs, and reasonable attorney fees.

(2) A person who directly or indirectly controls an offeror or seller who is liable under subsection (1) or a partner, officer, director, associate, or employee of the offeror or seller who participates or materially aids in the offer or sale is liable jointly and severally with the offeror or seller if the nonseller knew or in the exercise of reasonable care should have known of the violation. Contribution may be required among liable persons.

(3) A person who has made or engaged in the performance of a contract in violation of any provision of this part or any rule or order adopted or issued pursuant to this part or who has acquired any purported right under the contract with knowledge of the violation may not base any suit on the contract. Any condition, stipulation, or provision binding a person acquiring a living trust to waive compliance with any provision of this part or any rule or order adopted pursuant to this part is void as against public policy and the public interest.

(4) (a) Except as provided in subsection (4)(b), an action may not be maintained under this section to enforce any liability founded on a violation of 30-10-904, fraud, or misrepresentation unless it is brought within 2 years after discovery of the violation or after the time the discovery should have been made by the exercise of reasonable diligence.

(b) An action may not be maintained under this section to enforce any liability unless it is brought within 5 years after the transaction on which the action is based.

History: En. Sec. 15, Ch. 348, L. 1997.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 149, L. 1999, repealed sec. 18, Ch. 348, L. 1997, which terminated this section October 1, 1999.

CHAPTER 11

SALES

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Chapter Cross-References

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

Part 1

Sales and Exchanges

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Execution sale, 25-13-701.

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Sale under attachment proceeding, 27-18-801 through 27-18-803.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

Sale after mortgage foreclosure, 71-1-222.

Sale of agricultural products generally, Title 80, ch. 11.

Regulation of sale of milk, 81-23-102.

30-11-101. Sale defined. Sale is a contract by which, for a pecuniary consideration called a price, one transfers to another an interest in property.

History: En. Sec. 2310, Civ. C. 1895; re-en. Sec. 5079, Rev. C. 1907; re-en. Sec. 7581, R.C.M. 1921; Cal. Civ. C. Sec. 1721; Field Civ. C. Sec. 855; re-en. Sec. 7581, R.C.M. 1935; R.C.M. 1947, 74-101.

Cross-References

Uniform Commercial Code — sales, Title 30, ch. 2.

Application to exchanges, 30-11-113.

Auction sales, Title 30, ch. 11, part 5.

30-11-102. Subject of sale. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

History: En. Sec. 2311, Civ. C. 1895; re-en. Sec. 5080, Rev. C. 1907; re-en. Sec. 7582, R.C.M. 1921; Cal. Civ. C. Sec. 1722; Field Civ. C. Sec. 856; re-en. Sec. 7582, R.C.M. 1935; R.C.M. 1947, 74-102.

30-11-103. Agreement for sale. An agreement for sale is either:

(1) an agreement to sell;
(2) an agreement to buy; or
(3) a mutual agreement to sell and buy.

History: En. Sec. 2320, Civ. C. 1895; re-en. Sec. 5081, Rev. C. 1907; re-en. Sec. 7583, R.C.M. 1921; Cal. Civ. C. Sec. 1726; Field Civ. C. Sec. 857; re-en. Sec. 7583, R.C.M. 1935; R.C.M. 1947, 74-103.

Cross-References

Contracts, Title 28, ch. 2.

30-11-104. Agreement to sell. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

History: En. Sec. 2321, Civ. C. 1895; re-en. Sec. 5082, Rev. C. 1907; re-en. Sec. 7584, R.C.M. 1921; Cal. Civ. C. Sec. 1727; Field Civ. C. Sec. 858; re-en. Sec. 7584, R.C.M. 1935; R.C.M. 1947, 74-104.

30-11-105. Agreement to buy. An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing.

History: En. Sec. 2322, Civ. C. 1895; re-en. Sec. 5083, Rev. C. 1907; re-en. Sec. 7585, R.C.M. 1921; Cal. Civ. C. Sec. 1728; Field Civ. C. Sec. 859; re-en. Sec. 7585, R.C.M. 1935; R.C.M. 1947, 74-105.

30-11-106. Agreement to sell and buy. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

History: En. Sec. 2323, Civ. C. 1895; re-en. Sec. 5084, Rev. C. 1907; re-en. Sec. 7586, R.C.M. 1921; Cal. Civ. C. Sec. 1729; Field Civ. C. Sec. 860; re-en. Sec. 7586, R.C.M. 1935; R.C.M. 1947, 74-106.

30-11-107. What may be the subject of the contract. Any property which, if in existence, might be the subject of sale may be the subject of an agreement for sale, whether in existence or not.

History: En. Sec. 2324, Civ. C. 1895; re-en. Sec. 5085, Rev. C. 1907; re-en. Sec. 7587, R.C.M. 1921; Cal. Civ. C. Sec. 1730; Field Civ. C. Sec. 861; re-en. Sec. 7587, R.C.M. 1935; R.C.M. 1947, 74-107.

30-11-108. Agreement to sell real property. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

History: En. Sec. 2325, Civ. C. 1895; re-en. Sec. 5086, Rev. C. 1907; re-en. Sec. 7588, R.C.M. 1921; Cal. Civ. C. Sec. 1731; Based on Field Civ. C. Sec. 862; re-en. Sec. 7588, R.C.M. 1935; R.C.M. 1947, 74-108.

Cross-References

Transfer of real property, Title 70, ch. 20.

Lien of seller of real property, 71-3-1301 through 71-3-1303.

30-11-109. Usual common-law covenants required by such contracts, when. An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of "seisin", "quiet enjoyment", "further assurance", "general warranty", and "against encumbrances".

History: En. Sec. 2326, Civ. C. 1895; re-en. Sec. 5087, Rev. C. 1907; re-en. Sec. 7589, R.C.M. 1921; Cal. Civ. C. Sec. 1733; Field Civ. C. Sec. 863; re-en. Sec. 7589, R.C.M. 1935; R.C.M. 1947, 74-109.

Cross-References

What included in authority to sell real property, 28-10-422.

Covenants running with land, Title 70, ch. 17, part 2.

Implied covenants, 70-20-304.

30-11-110. Form of covenants. The covenants mentioned in 30-11-109 must be in substance as follows:

"The party of the first part covenants with the party of the second part that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part and all persons acquiring any interest in the same through or for him will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

History: En. Sec. 2327, Civ. C. 1895; re-en. Sec. 5088, Rev. C. 1907; re-en. Sec. 7590, R.C.M. 1921; Cal. Civ. C. Sec. 1734; Field Civ. C. Sec. 864; re-en. Sec. 7590, R.C.M. 1935; R.C.M. 1947, 74-110.

Cross-References

Damages for breach of covenant, 27-1-316.

What included in authority to sell real property, 28-10-422.

Covenants running with land, Title 70, ch. 17, part 2.

Implied covenants, 70-20-304.

30-11-111. Contract for sale of real property. No agreement for the sale of real property or of any interest therein is valid unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged or his agent thereunto authorized in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

History: En. Sec. 2342, Civ. C. 1895; re-en. Sec. 5091, Rev. C. 1907; re-en. Sec. 7593, R.C.M. 1921; Cal. Civ. C. Sec. 1741; Based on Field Civ. C. Sec. 867; re-en. Sec. 7593, R.C.M. 1935; R.C.M. 1947, 74-203.

Cross-References

What contracts must be in writing, 28-2-903.

Final written expression — parol or extrinsic evidence, 30-2-202.

Transfer of real property, Title 70, ch. 20.

30-11-112. Exchange defined. Exchange is a contract by which the parties mutually give or agree to give one thing for another, neither thing nor both things being money only.

History: En. Sec. 2430, Civ. C. 1895; re-en. Sec. 5129, Rev. C. 1907; re-en. Sec. 7632, R.C.M. 1921; Cal. Civ. C. Sec. 1804; Field Civ. C. Sec. 903; re-en. Sec. 7632, R.C.M. 1935; R.C.M. 1947, 74-501.

Cross-References

Price payable in money, goods, realty, or otherwise, 30-2-304.

30-11-113. Sale equivalent to exchange. The provisions of the sections on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives and of a buyer as to that which he takes.

History: En. Sec. 2432, Civ. C. 1895; re-en. Sec. 5131, Rev. C. 1907; re-en. Sec. 7634, R.C.M. 1921; Cal. Civ. C. Sec. 1806; Field Civ. C. Sec. 905; re-en. Sec. 7634, R.C.M. 1935; R.C.M. 1947, 74-503.

30-11-114. Warranty of money. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

History: En. Sec. 2433, Civ. C. 1895; re-en. Sec. 5132, Rev. C. 1907; re-en. Sec. 7635, R.C.M. 1921; Cal. Civ. C. Sec. 1807; Field Civ. C. Sec. 906; re-en. Sec. 7635, R.C.M. 1935; R.C.M. 1947, 74-504.

Cross-References

Money, 30-3-107.

30-11-115. Uniform Commercial Code overrides. The provisions of this part do not apply to exchanges subject to the Uniform Commercial Code.

History: En. 74-505 by Sec. 11-151, Ch. 264, L. 1963; R.C.M. 1947, 74-505; amd. Sec. 5, Ch. 137, L. 1979.

Cross-References

Uniform Commercial Code — sales, Title 30, ch. 2.

Part 2
Seller's Responsibilities

30-11-201. When a seller must act as a depositary. After personal property has been sold and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

History: En. Sec. 2350, Civ. C. 1895; re-en. Sec. 5095, Rev. C. 1907; re-en. Sec. 7598, R.C.M. 1921; Cal. Civ. C. Sec. 1748; Field Civ. C. Sec. 869; re-en. Sec. 7598; R.C.M. 1935; R.C.M. 1947, 74-301.

Cross-References

Attachment of property covered by security interest, 27-18-413.

Uniform Commercial Code — sales, Title 30, ch. 2.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Recovery of livestock, 81-8-312.

30-11-202. When seller may resell. If a buyer of personal property does not pay for it according to contract and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the law on liens.

History: En. Sec. 2351, Civ. C. 1895; re-en. Sec. 5096, Rev. C. 1907; re-en. Sec. 7599, R.C.M. 1921; Cal. Civ. C. Sec. 1749; Field Civ. C. Sec. 870; re-en. Sec. 7599, R.C.M. 1935; R.C.M. 1947, 74-302.

Cross-References

Seller's remedies in general, 30-2-703.

Seller's resale including contract for resale, 30-2-706.

30-11-203. Delivery on demand. One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

History: En. Sec. 2360, Civ. C. 1895; re-en. Sec. 5097, Rev. C. 1907; re-en. Sec. 7600, R.C.M. 1921; Cal. Civ. C. Sec. 1753; Field Civ. C. Sec. 871; re-en. Sec. 7600, R.C.M. 1935; R.C.M. 1947, 74-303.

Cross-References

Manner of seller's tender of delivery, 30-2-503.

Effect of seller's tender — delivery on condition, 30-2-507.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-204. Delivery — where made. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

History: En. Sec. 2361, Civ. C. 1895; re-en. Sec. 5098, Rev. C. 1907; re-en. Sec. 7601, R.C.M. 1921; Cal. Civ. C. Sec. 1754; Field Civ. C. Sec. 872; re-en. Sec. 7601, R.C.M. 1935; R.C.M. 1947, 74-304.

Cross-References

Absence of specified place for delivery, 30-2-308.

Manner of seller's tender of delivery, 30-2-503.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-205. Expense of transportation. One who sells personal property must bring it to his own door or other convenient place for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

History: En. Sec. 2362, Civ. C. 1895; re-en. Sec. 5099, Rev. C. 1907; re-en. Sec. 7602, R.C.M. 1921; Cal. Civ. C. Sec. 1755; Field Civ. C. Sec. 873; re-en. Sec. 7602, R.C.M. 1935; R.C.M. 1947, 74-305.

Cross-References

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

30-11-206. Notice of election as to delivery. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

History: En. Sec. 2363, Civ. C. 1895; re-en. Sec. 5100, Rev. C. 1907; re-en. Sec. 7603, R.C.M. 1921; Cal. Civ. C. Sec. 1756; Field Civ. C. Sec. 874; re-en. Sec. 7603, R.C.M. 1935; R.C.M. 1947, 74-306.

Cross-References

Absence of specified place for delivery, 30-2-308.

Manner of seller's tender of delivery, 30-2-503.

Effect of seller's tender — delivery on condition, 30-2-507.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-207. Transportation. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending or it will be at his own risk during its transportation. If he follows such directions or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

History: En. Sec. 2364, Civ. C. 1895; re-en. Sec. 5101, Rev. C. 1907; re-en. Sec. 7604, R.C.M. 1921; Cal. Civ. C. Sec. 1757; Field Civ. C. Sec. 875; re-en. Sec. 7604, R.C.M. 1935; R.C.M. 1947, 74-307.

Cross-References

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

30-11-208. Delivery to be within reasonable hours. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

History: En. Sec. 2365, Civ. C. 1895; re-en. Sec. 5102, Rev. C. 1907; re-en. Sec. 7605, R.C.M. 1921; Cal. Civ. C. Sec. 1758; Field Civ. C. Sec. 876; re-en. Sec. 7605, R.C.M. 1935; R.C.M. 1947, 74-308.

Cross-References

Manner of seller's tender of delivery, 30-2-503.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-209. Warranty defined. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

History: **En. Sec. 2370, Civ. C. 1895; re-en. Sec. 5103, Rev. C. 1907; re-en. Sec. 7606, R.C.M. 1921; Cal. Civ. C. Sec. 1763; Field Civ. C. Sec. 877; re-en. Sec. 7606, R.C.M. 1935; R.C.M. 1947, 74-309.**

Cross-References

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

30-11-210. No implied warranty in mere contract of sale. Except as prescribed by this part, a mere contract of sale or agreement to sell does not imply a warranty.

History: **En. Sec. 2371, Civ. C. 1895; re-en. Sec. 5104, Rev. C. 1907; re-en. Sec. 7607, R.C.M. 1921; Cal. Civ. C. Sec. 1764; Field Civ. C. Sec. 878; re-en. Sec. 7607, R.C.M. 1935; R.C.M. 1947, 74-310.**

Cross-References

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

Third-party beneficiaries of warranties express or implied, 30-2-318.

30-11-211. Warranty of title to personal property. One who sells or agrees to sell personal property as his own thereby warrants that he has a good and unencumbered title thereto.

History: **En. Sec. 2372, Civ. C. 1895; re-en. Sec. 5105, Rev. C. 1907; re-en. Sec. 7608, R.C.M. 1921; Cal. Civ. C. Sec. 1765; Field Civ. C. Sec. 879; re-en. Sec. 7608, R.C.M. 1935; R.C.M. 1947, 74-311.**

Cross-References

Warranty of title and against infringement — buyer's obligation against infringement, 30-2-312.

30-11-212. Warranty on sale by sample. One who sells or agrees to sell goods by sample thereby warrants the bulk to be equal to the sample.

History: **En. Sec. 2373, Civ. C. 1895; re-en. Sec. 5106, Rev. C. 1907; re-en. Sec. 7609, R.C.M. 1921; Cal. Civ. C. Sec. 1766; Field Civ. C. Sec. 880; re-en. Sec. 7609, R.C.M. 1935; R.C.M. 1947, 74-312.**

Cross-References

Express warranties by affirmation, promise, description, or sample, 30-2-313.

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

30-11-213. Warranty when seller knows that buyer relies on his statements. One who sells or agrees to sell personal property knowing that the buyer relies upon his advice or judgment thereby warrants to the buyer that neither the seller nor any agent employed by him in the transaction knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

History: **En. Sec. 2374, Civ. C. 1895; re-en. Sec. 5107, Rev. C. 1907; re-en. Sec. 7610, R.C.M. 1921; Cal. Civ. C. Sec. 1767; Field Civ. C. Sec. 881; re-en. Sec. 7610, R.C.M. 1935; R.C.M. 1947, 74-313.**

Cross-References

Express warranties by affirmation, promise, description, or sample, 30-2-313.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-214. Warranty when merchandise not in existence. One who agrees to sell merchandise not then in existence thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties and as nearly so at the place of delivery as can be secured by reasonable care.

History: **En. Sec. 2375, Civ. C. 1895; re-en. Sec. 5108, Rev. C. 1907; re-en. Sec. 7611, R.C.M. 1921; Cal. Civ. C. Sec. 1768; Field Civ. C. Sec. 882; re-en. Sec. 7611, R.C.M. 1935; R.C.M. 1947, 74-314.**

Cross-References

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-215. Manufacturer's warranty against latent defects. One who sells or agrees to sell an article of his own manufacture thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

History: En. Sec. 2376, Civ. C. 1895; re-en. Sec. 5109, Rev. C. 1907; re-en. Sec. 7612, R.C.M. 1921; Cal. Civ. C. Sec. 1769; Field Civ. C. Sec. 883; re-en. Sec. 7612, R.C.M. 1935; R.C.M. 1947, 74-315.

Cross-References

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-216. Warranty of fitness for particular purpose. One who manufactures an article under an order for a particular purpose warrants by the sale that it is reasonably fit for that purpose.

History: En. Sec. 2377, Civ. C. 1895; re-en. Sec. 5110, Rev. C. 1907; re-en. Sec. 7613, R.C.M. 1921; Cal. Civ. C. Sec. 1770; Field Civ. C. Sec. 884; re-en. Sec. 7613, R.C.M. 1935; R.C.M. 1947, 74-316.

Cross-References

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-217. Warranty when thing cannot be examined by buyer. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer thereby warrants that it is sound and merchantable.

History: En. Sec. 2378, Civ. C. 1895; re-en. Sec. 5111, Rev. C. 1907; re-en. Sec. 7614, R.C.M. 1921; Cal. Civ. C. Sec. 1771; Field Civ. C. Sec. 885; re-en. Sec. 7614, R.C.M. 1935; R.C.M. 1947, 74-317.

Cross-References

Express warranties by affirmation, promise, description, or sample, 30-2-313.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-218. Warranty that trademark is genuine. One who sells or agrees to sell any article to which there is affixed or attached a trademark thereby warrants that trademark to be genuine and lawfully used.

History: En. Sec. 2379, Civ. C. 1895; re-en. Sec. 5112, Rev. C. 1907; re-en. Sec. 7615, R.C.M. 1921; Cal. Civ. C. Sec. 1772; Field Civ. C. Sec. 886; re-en. Sec. 7615, R.C.M. 1935; R.C.M. 1947, 74-318.

Cross-References

Trademarks, Title 30, ch. 13, part 3.

30-11-219. Warranty of truth of other marks. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof or the place where it was in whole or in part produced, manufactured, or prepared thereby warrants the truth thereof.

History: En. Sec. 2380, Civ. C. 1895; re-en. Sec. 5113, Rev. C. 1907; re-en. Sec. 7616, R.C.M. 1921; Cal. Civ. C. Sec. 1773; Field Civ. C. Sec. 887; re-en. Sec. 7616, R.C.M. 1935; R.C.M. 1947, 74-319.

Cross-References

Express warranties by affirmation, promise, description, or sample, 30-2-313.

30-11-220. Warranty on sale of written instrument. One who sells or agrees to sell an instrument purporting to bind anyone to the performance of any act thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto where that is material, the extinction of its obligations, or its invalidity for any cause.

History: En. Sec. 2381, Civ. C. 1895; re-en. Sec. 5114, Rev. C. 1907; re-en. Sec. 7617, R.C.M. 1921; Cal. Civ. C. Sec. 1774; Field Civ. C. Sec. 888; re-en. Sec. 7617, R.C.M. 1935; R.C.M. 1947, 74-320.

30-11-221. Warranty on sale of goodwill. One who sells the goodwill of a business thereby warrants that he will not endeavor to draw off any of the customers.

History: En. Sec. 2383, Civ. C. 1895; re-en. Sec. 5116, Rev. C. 1907; re-en. Sec. 7619, R.C.M. 1921; Cal. Civ. C. Sec. 1776; Field Civ. C. Sec. 890; re-en. Sec. 7619, R.C.M. 1935; R.C.M. 1947, 74-322.

Cross-References

Goodwill of business, 30-13-121.

Goodwill transferable, 30-13-122.

30-11-222. Warranty upon judicial sale. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

History: En. Sec. 2384, Civ. C. 1895; re-en. Sec. 5117, Rev. C. 1907; re-en. Sec. 7620, R.C.M. 1921; Cal. Civ. C. Sec. 1777; Field Civ. C. Sec. 891; re-en. Sec. 7620, R.C.M. 1935; R.C.M. 1947, 74-323.

Cross-References

Sale on execution, Title 25, ch. 13, part 7.

30-11-223. Effect of general warranty. A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware or which were then easily discernible by him without the exercise of peculiar skill, but it extends to all other defects.

History: En. Sec. 2385, Civ. C. 1895; re-en. Sec. 5118, Rev. C. 1907; re-en. Sec. 7621, R.C.M. 1921; Cal. Civ. C. Sec. 1778; Field Civ. C. Sec. 892; re-en. Sec. 7621, R.C.M. 1935; R.C.M. 1947, 74-324.

Cross-References

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

30-11-224. Uniform Commercial Code overrides. This part shall not apply to sales subject to the Uniform Commercial Code.

History: En. 74-325 by Sec. 11-150, Ch. 264, L. 1963; R.C.M. 1947, 74-325.

Cross-References

Uniform Commercial Code — sales, Title 30, ch. 2.

Part 3

Merchant's Rights

30-11-301. Definitions. (1) The term "merchandise" shall mean any personal property capable of manual delivery displayed, held, or offered for sale by a merchant.

(2) The term "merchant" as used in this part shall mean an owner or operator and the agent, consignee, employee, lessee, or officer of an owner or operator of any merchant's premises.

(3) The term "premises" shall mean any establishment or part thereof wherein merchandise is displayed, held, or offered for sale.

History: En. Sec. 1, Ch. 11, L. 1957; R.C.M. 1947, 64-212.

30-11-302. Obligation to keep merchandise in full view. Any merchant shall have the right to request any individual on his premises to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other purpose. No merchant shall be criminally or civilly liable for slander, false arrest, or otherwise on account of having made such a request.

History: En. Sec. 2, Ch. 11, L. 1957; R.C.M. 1947, 64-213.

Cross-References

Theft, 45-6-301.

Part 4

Commission Merchants

Part Cross-References

Sale of fine art by dealer and rights of artist, Title 22, ch. 2, part 5.

Agricultural commodities generally, Title 80, ch. 4, part 4.

Warehouse operators of agricultural commodities, Title 80, ch. 4, part 5.

30-11-401. Commission merchants to acknowledge receipt of property. Any persons doing business in this state as commission merchants or who shall receive from any person of this state agricultural or horticultural products or farm produce raised in this state to sell on commission shall immediately, upon receipt of such goods, send to the consignor or consignors a statement in writing showing what property has been received.

History: En. Sec. 1, Ch. 2, L. 1909; re-en. Sec. 4183, R.C.M. 1921; re-en. Sec. 4183, R.C.M. 1935; R.C.M. 1947, 66-701.

Cross-References

Sale to pay costs of storage, 70-6-411.

30-11-402. Statement to consignor on sale of property. Whenever any commission merchant or person receiving any property as mentioned in the preceding section shall sell the same or 25% thereof, such commission merchant or person shall immediately render a true statement to the consignor, showing what portion of such consignment has been sold, to whom sold, and the price received therefor.

History: En. Sec. 2, Ch. 2, L. 1909; re-en. Sec. 4184, R.C.M. 1921; re-en. Sec. 4184, R.C.M. 1935; R.C.M. 1947, 66-702.

Cross-References

Sale to pay costs of storage, 70-6-411.

30-11-403. Penalties for violation. Any person engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of 30-11-401 and 30-11-402 or who shall make a false report or statement of the matters herein required, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 2, L. 1909; re-en. Sec. 4185, R.C.M. 1921; re-en. Sec. 4185, R.C.M. 1935; R.C.M. 1947, 66-703.

Part 5

Auction Sales and Auctioneers

30-11-501. Sale by auction defined. A sale by auction is a sale by public outcry to the highest bidder on the spot.

History: En. Sec. 2410, Civ. C. 1895; re-en. Sec. 5122, Rev. C. 1907; re-en. Sec. 7625, R.C.M. 1921; Cal. Civ. C. Sec. 1792; Field Civ. C. Sec. 896; re-en. Sec. 7625, R.C.M. 1935; Sec. 66-213, R.C.M. 1947; redes. 74-701 by Sec. 1, Ch. 263, L. 1977; R.C.M. 1947, 74-701.

30-11-502. Sale by auction. (1) In a sale by auction of goods by lot, each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid, the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection does not apply to any bid at a forced sale.

History: En. Sec. 2-328, Ch. 264, L. 1963; Sec. 87A-2-328, R.C.M. 1947; amd. and redes. 74-702 by Sec. 2, Ch. 263, L. 1977; R.C.M. 1947, 74-702.

Cross-References

Highway equipment by bid, 18-6-103.

Firm offers, 30-2-205.

Enforcement of lien — sale (agisters' lien), 71-3-1203.

Enforcement of lien (hotel lien), 71-3-1402.

Sale of confiscated birds and animals, 87-1-511.

30-11-503. Sale under written conditions. When a sale by auction is made upon written or printed conditions, those conditions cannot be modified by any oral declaration of the auctioneer except those for his own protection.

History: En. Sec. 2413, Civ. C. 1895; re-en. Sec. 5125, Rev. C. 1907; re-en. Sec. 7628, R.C.M. 1921; Cal. Civ. C. Sec. 1795; Field Civ. C. Sec. 899; re-en. Sec. 7628, R.C.M. 1935; Sec. 66-216, R.C.M. 1947; amd. and redes. 74-703 by Sec. 3, Ch. 263, L. 1977; R.C.M. 1947, 74-703.

Cross-References

What contracts must be in writing, 28-2-903.

30-11-504. Auctioneer's memorandum of sale. When property is sold by auction, an entry made by the auctioneer in his sale book at the time of the sale specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer binds both the parties in the same manner as if made by themselves.

History: En. Sec. 2416, Civ. C. 1895; re-en. Sec. 5128, Rev. C. 1907; re-en. Sec. 7631, R.C.M. 1921; Cal. Civ. C. Sec. 1798; Field Civ. C. Sec. 902; re-en. Sec 7631, R.C.M. 1935; Sec. 66-219, R.C.M. 1947; amd. and redes. 74-704 by Sec. 4, Ch. 263, L. 1977; R.C.M. 1947, 74-704.

Cross-References

What contracts must be in writing, 28-2-903.

Certificate of sale, 87-1-512.

30-11-505. Book of sales. (1) Each auctioneer must keep a book and enter all sales showing the name of the owner of the goods sold, to whom sold, the amount paid, and the date of each sale.

(2) The book must be open for inspection by interested persons during normal business hours.

History: En. Sec. 3424, Pol. C. 1895; re-en. Sec. 2132, Rev. C. 1907; re-en. Sec. 4155, R.C.M. 1921; Cal. Pol. C. Sec. 3306; re-en. Sec. 4155, R.C.M. 1935; Sec. 66-211, R.C.M. 1947; amd. and redes. 74-705 by Sec. 5, Ch. 263, L. 1977; R.C.M. 1947, 74-705.

Cross-References

Certificate of sale, 87-1-512.

30-11-506. Auctioneer's authority from the seller. An auctioneer, in the absence of special authority or usage, has authority from the seller only as follows:

(1) to sell by public auction to the highest bidder;
(2) to sell for cash only, except for articles usually sold on credit at auction;
(3) to warrant as an agent pursuant to 28-10-421;
(4) to prescribe reasonable rules and terms of sale;
(5) to deliver the thing sold upon payment of the price;
(6) to collect the price; and
(7) to do whatever else is necessary, proper, and usual in the ordinary course of business for effecting these purposes.

History: En. Sec. 3160, Civ. C. 1895; re-en. Sec. 5461, Rev. C. 1907; re-en. Sec. 7976, R.C.M. 1921; Cal. Civ. C. Sec. 2362; Field Civ. C. Sec. 1264; re-en. Sec. 7976, R.C.M. 1935; Sec. 66-201, R.C.M. 1947; amd. and redes. 74-706 by Sec. 6, Ch. 263, L. 1977; R.C.M. 1947, 74-706.

30-11-507. Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of sale as prescribed in 30-11-504.

History: En. Sec. 3161, Civ. C. 1895; re-en. Sec. 5462, Rev. C. 1907; re-en. Sec. 7977, R.C.M. 1921; Cal. Civ. C. Sec. 2363; Field Civ. C. Sec. 1265; re-en. Sec. 7977, R.C.M. 1935; amd. Sec. 11-145, Ch. 264, L. 1963; Sec. 66-202, R.C.M. 1947; amd. and redes. 74-707 by Sec. 7, Ch. 263, L. 1977; R.C.M. 1947, 74-707.

30-11-508. Auctioneer — authority and bond. Any citizen of this state may become an auctioneer and be authorized to sell real or personal property at public auction in any county in this state after giving a bond in accordance with the provisions of this part for the faithful performance of his duties.

History: En. Sec. 3400, Pol. C. 1895; re-en. Sec. 2119, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1921; re-en. Sec. 4147, R.C.M. 1921; Cal. Pol. C. Sec. 3284; re-en. Sec. 4147, R.C.M. 1935; Sec. 66-203, R.C.M. 1947; amd. and redes. 74-708 by Sec. 8, Ch. 263, L. 1977; R.C.M. 1947, 74-708.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

30-11-509. Reciprocal privileges to nonresident auctioneers. The residency requirements required by this state for an auctioneer are waived for the citizens of any other state to the same extent that the home state of the applicant waives residency requirements for the citizens of this state.

History: En. Sec. 1, Ch. 173, L. 1963; Sec. 66-203.1, R.C.M. 1947; amd. and redes. 74-709 by Sec. 9, Ch. 263, L. 1977; R.C.M. 1947, 74-709.

30-11-510. Bond and sureties — approval — filing. (1) Bond must be payable to the state, with one or more sureties, in the sum of $5,000 and approved by the county clerk of the county in which the auctioneer resides and filed in his office.

(2) If the auctioneer is not a resident, the bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R.C.M. 1921; Cal. Pol. C. Sec. 3285; re-en. Sec. 4148, R.C.M. 1935; amd. Sec. 2, Ch. 173, L. 1963; Sec. 66-204, R.C.M. 1947; amd. and redes. 74-710 by Sec. 10, Ch. 263, L. 1977; R.C.M. 1947, 74-710.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

30-11-511. Auctioneers ex officio. (1) In any county without an auctioneer, the sheriff or a constable thereof is ex officio auctioneer and is permitted to sell any property at public auction.

(2) He is liable on his official bond for any delinquency as the ex officio auctioneer.

History: En. Sec. 3407, Pol. C. 1895; re-en. Sec. 2126, Rev. C. 1907; re-en. Sec. 4149, R.C.M. 1921; Cal. Pol. C. Sec. 3291; re-en. Sec. 4149, R.C.M. 1935; amd. Sec. 7, Ch. 253, L. 1975; Sec. 66-205, R.C.M. 1947; amd. and redes. 74-711 by Sec. 11, Ch. 263, L. 1977; R.C.M. 1947, 74-711.

30-11-512. Assistant — who may act and when. (1) An auctioneer, in the event of inability to attend an auction by reason of sickness, the performance of a duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ an agent or employee to hold the auction in his name and behalf.

(2) The employee shall file with the county clerk of the county an affidavit swearing to faithfully perform the duties of auctioneer.

(3) An auctioneer may employ a crier at any sale, for whose acts he shall be responsible.

History: En. Sec. 3408, Pol. C. 1895; re-en. Sec. 2127, Rev. C. 1907; re-en. Sec. 4150, R.C.M. 1921; Cal. Pol. C. Sec. 3292; re-en. Sec. 4150, R.C.M. 1935; Sec. 66-206, R.C.M. 1947; amd. and redes. 74-712 by Sec. 12, Ch. 263, L. 1977; R.C.M. 1947, 74-712.

30-11-513. Auctioneers to designate one place of business — partners. (1) An auctioneer shall designate in writing with the county clerk one place at which he will conduct auctions within any city.

(2) He shall designate in the same document his partners, if any, in the business.

(3) He may not offer goods for sale at a place other than that designated unless the goods are in their original packages, are bulky and usually sold in warehouses, or are usually sold on public streets.

History: En. Sec. 3420, Pol. C. 1895; re-en. Sec. 2128, Rev. C. 1907; re-en. Sec. 4151, R.C.M. 1921; Cal. Pol. C. Sec. 3302; re-en. Sec. 4151, R.C.M. 1935; Sec. 66-207, R.C.M. 1947; amd. and redes. 74-713 by Sec. 13, Ch. 263, L. 1977; R.C.M. 1947, 74-713.

30-11-514. Penalty. A person convicted of violating a provision of this part shall be fined no more than $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition he shall be liable for damages incurred by any aggrieved party by reason of such violation.

History: En. 74-714 by Sec. 14, Ch. 263, L. 1977; R.C.M. 1947, 74-714.

30-11-515. Enforcement. The provisions of this part shall be enforced by the department of commerce and the county attorney of the county in which the violation occurred.

History: En. 74-715 by Sec. 15, Ch. 263, L. 1977; R.C.M. 1947, 74-715; amd. Sec. 2, Ch. 274, L. 1981.

30-11-516. Powers of cities and towns. Towns and cities may tax, license, and regulate persons, firms, associations, corporations, or other legal entities engaging in or desiring to engage in public auctions and may require a license and charge a fee therefor. Towns and cities may provide penalties for violations of the requirements.

History: En. Sec. 11, Ch. 111, L. 1955; amd. Sec. 1, Ch. 225, L. 1959; Sec. 66-230, R.C.M. 1947; amd. and redes. 74-716 by Sec. 16, Ch. 263, L. 1977; R.C.M. 1947, 74-716.

Cross-References

Licensing discrimination by governmental agency prohibited, 49-3-204.

Part 6
Factors

Part Cross-References

Sale of fine art by art dealer, Title 22, ch. 2, part 5.

Agency, Title 28, ch. 10.

30-11-601. Factor defined. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him and is vested by the latter with the possession or control of the property or authorized to receive payment therefor from the purchaser.

History: En. Sec. 2750, Civ. C. 1895; re-en. Sec. 5290, Rev. C. 1907; re-en Sec. 7805, R.C.M. 1921; Cal. Civ. C. Sec. 2026; Based on Field Civ. C. Sec. 1045; re-en. 7805, R.C.M. 1935; R.C.M. 1947, 2-401.

Cross-References

Termination at will, 39-2-503.

30-11-602. Obedience required from factor. A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so and of the time and place of sale, and proceeding in all respects as a pledgee.

History: En. Sec. 2751, Civ. C. 1895; re-en. Sec. 5291, Rev. C. 1907; re-en Sec. 7806, R.C.M. 1921; Cal. Civ. C. Sec. 2027; Based on Field Civ. C. Sec. 1046; re-en. 7806, R.C.M. 1935; R.C.M. 1947, 2-402.

Cross-References

Agent not to exceed actual authority, 28-10-301.

Employee must obey employer, 39-2-404.

30-11-603. Sales on credit. A factor may sell property consigned to him on such credit as is usual but, having once agreed with the purchaser upon the terms of credit, may not extend it.

History: En. Sec. 2752, Civ. C. 1895; re-en. Sec. 5292, Rev. C. 1907; re-en Sec. 7807, R.C.M. 1921; Cal. Civ. C. Sec. 2028; Based on Field Civ. C. Sec. 1047; re-en. 7807, R.C.M. 1935; R.C.M. 1947, 2-403.

Cross-References

What included in authority to sell personal property, 28-10-421.

What included in authority to sell real property, 28-10-422.

Authority of agent to sell to receive price, 28-10-423.

30-11-604. Liability of factor under guaranty commission. A factor who charges his principal with a guaranty commission upon a sale thereby assumes absolutely to pay the price when it falls due as if it were a debt of his own and not as a mere guarantor for the purchaser. He does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

History: En. Sec. 2753, Civ. C. 1895; re-en. Sec. 5293, Rev. C. 1907; re-en Sec. 7808, R.C.M. 1921; Cal. Civ. C. Sec. 2029; Based on Field Civ. C. Sec. 1048; re-en. 7808, R.C.M. 1935; R.C.M. 1947, 2-404.

Cross-References

When agent responsible to third persons as principal, 28-10-702.

Guaranty defined, 28-11-101.

Knowledge or consent of principal not required, 28-11-102.

30-11-605. Principal's consent needed to relieve factor from liability. A factor who receives property for sale under a general agreement or usage to guarantee the sales or the remittance of the proceeds cannot relieve himself from responsibility therefor without the consent of his principal.

History: **En. Sec. 2754, Civ. C. 1895; re-en. Sec. 5294, Rev. C. 1907; re-en Sec. 7809, R.C.M. 1921; Cal. Civ. C. Sec. 2030; Based on Field Civ. C. Sec. 1049; re-en. 7809, R.C.M. 1935; R.C.M. 1947, 2-405.**

30-11-606. Authority of factor. In addition to the authority of agents in general, a factor has actual authority for his principal, unless specially restricted, to:

(1) insure property consigned to him uninsured;

(2) sell on credit anything entrusted to him for sale, except such things as it is contrary to usage to sell on credit, but not to pledge, mortgage, or barter the same; and

(3) delegate his authority to his partner or servant but not to any person in an independent employment.

History: **En. Sec. 3171, Civ. C. 1895; re-en. Sec. 5464, Rev. C. 1907; re-en Sec. 7979, R.C.M. 1921; Cal. Civ. C. Sec. 2368; Field Civ. C. Sec. 1267; re-en. 7979, R.C.M. 1935; R.C.M. 1947, 2-406.**

30-11-607. Ostensible authority. A factor has ostensible authority to deal with the property of his principal as his own in transactions with persons not having notice of the actual ownership.

History: **En. Sec. 3172, Civ. C. 1895; re-en. Sec. 5465, Rev. C. 1907; re-en Sec. 7980, R.C.M. 1921; Cal. Civ. C. Sec. 2369; Field Civ. C. Sec. 1268; re-en. 7980, R.C.M. 1935; R.C.M. 1947, 2-407.**

Cross-References

Actual versus ostensible agency, 28-10-103.

What authority agent has, 28-10-401.

Ostensible authority defined, 28-10-403.

Part 7

Canceled Dealership Contracts Repurchase Requirements

30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts;

(c) automobiles, trucks, and repair parts sold by an automobile or truck dealer as defined in 61-1-314;

(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in Title 61, chapter 1, part 1, and repair parts;

(e) snowmobiles, as defined in 23-2-601, and repair parts;

(f) off-highway vehicles, as defined in 23-2-801, and repair parts; and

(g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

(5) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers.

History: En. Sec. 1, Ch. 338, L. 1983; amd. Sec. 1, Ch. 297, L. 1985; amd. Sec. 1, Ch. 51, L. 1989.

30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) If a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items held by the dealer at the time of cancellation, plus cost of freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

(2) If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made within 60 days of the return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

History: En. Sec. 2, Ch. 338, L. 1983; amd. Sec. 2, Ch. 297, L. 1985; amd. Sec. 8, Ch. 522, L. 1991.

Cross-References

Security agreement defined, 30-9-105.

30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if he has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor.

History: En. Sec. 3, Ch. 338, L. 1983.

30-11-704. Repurchase of inventory of deceased retailer or wholesaler. If the retailer, wholesaler, or majority stockholder in a corporation operating as a retailer or wholesaler entitled to payment under this part dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in 30-11-702.

History: En. Sec. 4, Ch. 338, L. 1983; amd. Sec. 3, Ch. 297, L. 1985.

Cross-References

Heirs and devisees defined, 72-1-103.

30-11-705 through 30-11-710 reserved.

30-11-711. Rights not affected. (1) This part does not affect any contractual right of a wholesaler, manufacturer, or distributor to charge back to the retailer's or wholesaler's account any amount previously credited or paid as a discount incident to the retailer's or wholesaler's purchase of the goods.

(2) This part does not affect any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer or wholesaler.

History: En. Sec. 5, Ch. 338, L. 1983; amd. Sec. 4, Ch. 297, L. 1985.

Cross-References

Security interest defined, 30-1-201.

30-11-712. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or wholesaler's attorney fees, and court costs.

History: En. Sec. 6, Ch. 338, L. 1983; amd. Sec. 5, Ch. 297, L. 1985.

30-11-713 . Remedy as supplemental. (1) The provisions of this part are supplemental to any agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either his contract remedies or the remedy provided in 30-11-702. An election to pursue his contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in 30-11-702 as to any inventory not covered by contract.

History: En. Sec. 7, Ch. 338, L. 1983; amd. Sec. 6, Ch. 297, L. 1985.

Cross-References

Breach of contract — damages, 27-1-311.

Part 8

Termination, Cancellation, Nonrenewal, or Substantial Alteration of Farm Implements Dealership Agreements

Part Cross-References

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

30-11-801. Definitions. As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Department" means the department of commerce established in 2-15-1801.

(5) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(6) "Designated successor" means a person designated in writing by the retiring dealer to succeed him in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(7) "Farm implement" means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

(8) (a) "Good cause", when used in 30-11-801 through 30-11-803 and 30-11-811, means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon him by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in 30-11-804 through 30-11-809, means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

History: En. Sec. 1, Ch. 45, L. 1985; amd. Sec. 1, Ch. 522, L. 1991.

30-11-802. Cancellation and alteration of dealerships. No grantor may, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

History: En. Sec. 2, Ch. 45, L. 1985.

Cross-References

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

30-11-803. Notice of termination or change in dealership. (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy such default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

History: En. Sec. 3, Ch. 45, L. 1985.

30-11-804. Transfer. A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated member or members of the family of the dealer, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

History: En. Sec. 2, Ch. 522, L. 1991.

30-11-805. Refusal to honor succession to ownership — notice required. (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to 30-11-806, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

History: En. Sec. 3, Ch. 522, L. 1991.

30-11-806. Procedure to determine right to succeed. (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor his succession to the ownership and operation of the dealership may, within the 60-day period provided for in 30-11-805, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

History: En. Sec. 4, Ch. 522, L. 1991.

30-11-807. Written designation of succession unaffected. Sections 30-11-804 through 30-11-809 do not preclude a dealer from designating any person as his successor by written instrument filed with the grantor.

History: En. Sec. 5, Ch. 522, L. 1991.

30-11-808. Illegal cancellation of dealership based on natural disaster. A grantor may not attempt or threaten to terminate, cancel, fail to renew, or substantially change the circumstances of a dealership if the attempt or threat is based on the results of a natural disaster, including a sustained drought, in the dealership market area.

History: En. Sec. 6, Ch. 522, L. 1991.

30-11-809. Civil damages. A dealer suffering pecuniary loss due to a violation of 30-11-804 through 30-11-809 who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

History: En. Sec. 7, Ch. 522, L. 1991.

30-11-810 reserved.

30-11-811. Action for damages and injunctive relief. If any grantor violates this part, a dealer may bring an action against such grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

History: En. Sec. 4, Ch. 45, L. 1985.

Cross-References

Measure of damages, Title 27, ch. 1, part 3.

Specific and preventive relief, Title 27, ch. 1, part 4.

Injunctions, Title 27, ch. 19.

Enforcement of obligations arising by operation of law, 28-1-203.

CHAPTER 12

WEIGHTS, MEASURES, STANDARDS, AND LABELING

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30-12-601. Money of account.
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(Repealed. Sec. 1, Ch. 24, L. 1997)

Part 1

General Provisions

30-12-101. Definitions. Unless the context requires otherwise, in parts 1 through 5 of this chapter the following definitions apply:

(1) "Barrel", when used in connection with fermented liquor, means a unit of 31 gallons.

(2) "Commerce", "trade", or "commercial" means a monetary or value exchange between parties for merchandise or services.

(3) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of parts 1 through 5. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(4) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(5) "Cord", when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Intrastate commerce" means any commerce or trade that is begun, carried on, and completed wholly in this state, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(8) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(9) "Person" includes individuals, partnerships, corporations, companies, societies, and associations.

(10) "Sell" and "sale" include but are not limited to barter and exchange.

(11) "Ton" means a unit of 2,000 pounds avoirdupois weight.

(12) "Weight", when used in connection with any commodity, means net weight.

(13) "Weight", "measure", and "weights and measures" mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with those instruments and devices. The terms do not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. None of the provisions of parts 1 through 5 apply to electricity, gas, or water meters operated in a public utility system or to any appliances or accessories associated with them. The terms do not include time measuring devices by which products or services are sold.

History: En. Sec. 1, Ch. 99, L. 1969; amd. Sec. 146, Ch. 431, L. 1975; R.C.M. 1947, 90-153; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 442, L. 1989.

Cross-References

Fractional parts of unit and value — construction of contracts, 30-12-106.

30-12-102. Systems of weights and measures. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems may be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national institute of standards and technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

History: En. Sec. 2, Ch. 99, L. 1969; R.C.M. 1947, 90-154; amd. Sec. 2, Ch. 442, L. 1989.

Cross-References

Fractional parts of unit and value — construction of contracts, 30-12-106.

30-12-103. State standards of weight and measure. Those weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by this state for use as state standards are, when they have been certified as being satisfactory for use as such by the national institute of standards and technology, the state standards of weight and measure. The state standards must be kept in a safe and suitable place in the office or laboratory of the department. They may not be removed from there except for repairs or for certification.

History: En. Sec. 4, Ch. 99, L. 1969; amd. Sec. 147, Ch. 431, L. 1975; R.C.M. 1947, 90-156; amd. Sec. 3, Ch. 442, L. 1989.

Cross-References

General powers and duties of Department, 30-12-201.

30-12-104. Field standards and equipment. In addition to the state standards provided for in 30-12-103, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of parts 1 through 5 of this chapter. The field standards shall be verified upon their initial receipt and at least once each year thereafter by comparison with the state standards.

History: En. Sec. 5, Ch. 99, L. 1969; R.C.M. 1947, 90-157.

30-12-105. Use of metric sizes in sale of commodities — department to make rules. Notwithstanding any other provision, metric sizes as defined by the department of commerce by rule will be permitted, provided there is compliance with all labeling requirements of the state of Montana.

History: En. Sec. 1, Ch. 75, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 133, Ch. 575, L. 1981.

30-12-106. Fractional parts — construction of contracts. Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in 30-12-101 and 30-12-102, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

History: En. Sec. 33, Ch. 99, L. 1969; R.C.M. 1947, 90-185; MCA 1979, 30-12-501; redes. 30-12-106 by Code Commissioner, 1981.

Cross-References

Sale by net weight, 30-12-306.

Part 2

Authority of Department of Commerce

Part Cross-References

Offenses and penalties, 30-12-504.

30-12-201. General powers and duties of department. The department has the custody of the state standards of weight and measure and of the other standards and equipment provided for by parts 1 through 5 and shall keep accurate records of them. The department shall enforce the provisions of parts 1 through 5. It shall supervise the weights and measures used in commerce or trade that are offered for sale, sold, or in use in this state.

History: En. Sec. 7, Ch. 99, L. 1969; amd. Sec. 148, Ch. 431, L. 1975; R.C.M. 1947, 90-159; amd. Sec. 4, Ch. 442, L. 1989.

Cross-References

State standards of weight and measure, 30-12-103.

30-12-202. Specific powers and duties of department — rules. (1) The department shall adopt from time to time reasonable rules for the enforcement of parts 1 through 5, which rules have the effect of law. These rules may include:

(a) schedules of fees for testing and certification;

(b) standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;

(c) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department in the discharge of its official duties;

(d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved; and

(e) rules governing the voluntary registration of servicemen and service agencies.

(2) These rules shall include specifications, tolerances, and other technical requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(a) that are not accurate;

(b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(c) that facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national institute of standards and technology and published in national institute of standards and technology Handbook 44 and supplements thereto, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and other technical requirements for commercial

weighing and measuring devices of this state, except insofar as specifically modified, amended, or rejected by a rule issued by the department.

(4) An apparatus is considered to be "correct" when it conforms to all applicable requirements adopted as specified in this section. Other apparatus are considered to be "incorrect".

History: En. Sec. 8, Ch. 99, L. 1969; amd. Sec. 149, Ch. 431, L. 1975; R.C.M. 1947, 90-160; amd. Sec. 5, Ch. 442, L. 1989.

Cross-References

Method of sale of commodities — general, 30-12-301.

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

30-12-203. Licensing of weighing devices. (1) A person may not knowingly operate or use an unlicensed weighing device in trade or commerce for ascertaining the weight of any commodity.

(2) A license must be obtained by making application to the department upon blank forms to be provided by the division of weights and measures. Each license must require at least one inspection per year.

(3) An application must be accompanied by the proper fee as established by this section except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less	$ 12.00
500 pounds through 1,999 pounds	20.00
2,000 pounds through 7,999 pounds	40.00
8,000 pounds through 60,000 pounds	100.00
60,001 pounds or more	175.00

(4) The capacity of a weighing device must be determined by the manufacturer's rated capacity.

(5) All licenses must be annual and expire on the anniversary date established by rule by the board of review established in 30-16-302.

(6) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid before the first day of the sixth month of the year in which the license fee is due. A person failing to pay the renewal license fee before the first day of the sixth month of the year in which the license fee is due forfeits the right to use the weighing device, and it must be taken out of service by the division of weights and measures until the renewal fee and late renewal fee are paid.

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part.

History: En. 90-160.1 by Sec. 1, Ch. 244, L. 1973; R.C.M. 1947, 90-160.1; amd. Sec. 1, Ch. 591, L. 1983; amd. Sec. 1, Ch. 615, L. 1993; amd. Sec. 4, Ch. 366, L. 1997.

Cross-References

Licensing — discrimination, 49-3-204.

30-12-204. Testing at state-supported institutions. The department shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting its findings in writing to the executive officer of the institution concerned.

History: En. Sec. 9, Ch. 99, L. 1969; amd. Sec. 150, Ch. 431, L. 1975; R.C.M. 1947, 90-161.

30-12-205. General testing. (1) When not otherwise provided by law, the department may inspect and test to ascertain if they are correct all weights and measures kept, offered, or exposed for sale.

(2) The department, within a 12-month period or less frequently if in accordance with a schedule issued by it, and as often as it considers necessary, shall inspect and test, to ascertain if they are correct, all weights and measures commercially used:

(a) in determining the weight, measurement, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or of count; or

(b) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count.

(3) With respect to single-service devices designed to be used commercially only once and to be then discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of the devices. The lots of which the samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples.

(4) An itinerant peddler or hawker using weights and measures shall register his name and address with the department, in order that his equipment can be tested in accordance with the provisions of this law.

History: En. Sec. 10, Ch. 99, L. 1969; amd. Sec. 151, Ch. 431, L. 1975; R.C.M. 1947, 90-162.

30-12-206. Investigations. The department shall investigate complaints made to it concerning violations of parts 1 through 5. It shall, upon its own initiative, conduct those investigations it considers appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of parts 1 through 5 and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

History: En. Sec. 11, Ch. 99, L. 1969; amd. Sec. 152, Ch. 431, L. 1975; R.C.M. 1947, 90-163.

30-12-207. Inspection of packages. (1) The department shall adopt by rule and implement a schedule to weigh or measure and inspect packages or amounts of commodities kept, offered, exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered, exposed for sale, or sold in accordance with law. The schedule adopted must provide for random inspection of packages and commodities at randomly selected inspection sites. When those packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale in violation of law, the department may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of that lot.

(2) A person may not:

(a) sell or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless the package or amount of commodity has been brought into full compliance with all legal requirements; or

(b) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the department.

History: En. Sec. 12, Ch. 99, L. 1969; amd. Sec. 153, Ch. 431, L. 1975; R.C.M. 1947, 90-164; amd. Sec. 6, Ch. 442, L. 1989.

Cross-References

Offenses and penalties, 30-12-504.

30-12-208. Stop-use, stop-removal, and removal orders. The department may issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being or susceptible of being commercially used and issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery whenever in the course of enforcement of parts 1 through 5 it considers it necessary or expedient to issue those orders. A person may not use, remove from the premises specified, or fail to remove from the premises specified any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under this section.

History: En. Sec. 13, Ch. 99, L. 1969; amd. Sec. 154, Ch. 431, L. 1975; R.C.M. 1947, 90-165.

30-12-209. Disposition of correct and incorrect apparatus. (1) The department shall approve for use and seal or mark with appropriate devices those weights and measures which it finds upon inspection and test to be "correct" as defined in 30-12-202 and shall reject and mark or tag as "rejected" those weights and measures which it finds, upon inspection or test, to be "incorrect" as defined in 30-12-202 but which in its best judgment are susceptible of satisfactory repair.

(2) The department shall condemn, and may seize and destroy, weights and measures found to be incorrect which, in its best judgment, are not susceptible of satisfactory repair.

(3) Weights and measures that have been rejected may be confiscated and may be destroyed by the department if not corrected as required by 30-12-211 or if used or disposed of contrary to the requirements of 30-12-211.

(4) Sealing or marking are not required with respect to those weights and measures which may be exempted therefrom by a rule of the department issued under 30-12-202.

History: En. Sec. 14, Ch. 99, L. 1969; amd. Sec. 155, Ch. 431, L. 1975; R.C.M. 1947, 90-166.

Cross-References

Offenses and penalties, 30-12-504.

30-12-210. Police powers. In enforcing the provisions of parts 1 through 5 or any other law pertaining to weights and measures, the department may, in the manner provided by law for peace officers, arrest violators, conduct searches and inspections, and seize for use as evidence incorrect or unsealed weights and measures or packages of commodities unlawfully used, possessed, offered, or exposed for sale or unlawfully sold.

History: En. Sec. 15, Ch. 99, L. 1969; amd. Sec. 156, Ch. 431, L. 1975; R.C.M. 1947, 90-167.

Cross-References

Offenses and penalties, Title 30, ch. 12, part 5.

30-12-211. Duty of owners of incorrect apparatus. (1) Weights and measures that have been rejected under the authority of the department shall remain subject to the control of the department until suitable repair or disposition of them has been made as required by this section.

(2) The owner of rejected weights and measures shall correct them within 30 days or a longer period as may be authorized by the department.

(3) In place of this, the owner may dispose of them, but only in a manner specifically authorized by the department.

(4) Weights and measures that have been rejected may not again be used commercially until they have been officially reexamined and found to be correct, or until specific written permission for that use is issued by the department, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person properly registered to perform those acts under a rule issued by the department for the registration of weights and measures servicemen and service agencies.

History: **En. Sec. 17, Ch. 99, L. 1969; amd. Sec. 157, Ch. 431, L. 1975; R.C.M. 1947, 90-169.**

Cross-References

Offenses and penalties, Title 30, ch. 12, part 5.

30-12-212. Noncommercial inspections — fees. Subject to the availability of resources and upon payment of a fee commensurate with the costs of inspection, the department may inspect noncommercial weighing and measuring devices. Fees collected under this section must be deposited in the state general fund.

History: **En. Sec. 7, Ch. 442, L. 1989.**

Part 3

Method of Sale of Commodities

30-12-301. Method of sale of commodities — general. (1) Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in parts 1 through 5, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count. Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if those methods give accurate information as to the quantity of commodity sold. This section does not apply to:

(a) commodities when sold for immediate consumption on the premises where sold;

(b) vegetables when sold by the head or bunch;

(c) commodities in containers standardized by a law of this state or by federal law;

(d) commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure; or

(f) unprocessed vegetable and animal fertilizer when sold by cubic measure.

(2) The department may adopt reasonable rules necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

History: **En. Sec. 18, Ch. 99, L. 1969; amd. Sec. 158, Ch. 431, L. 1975; R.C.M. 1947, 90-170.**

Cross-References

Local government — authority to weigh, measure, and regulate certain commodities, 7-21-4203.

Specific powers and duties of Department — rules, 30-12-202.

30-12-302. Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions. (1) Except as otherwise provided in parts 1 through 5, a commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package definite, plain, and conspicuous declarations of:

(a) the identity of the commodity in the package unless it can easily be identified through the wrapper or container;

(b) the net quantity of the contents in terms of weight, measure, or count; and

(c) in the case of any package kept, offered, or exposed for sale or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rules adopted by the department.

(2) In connection with the declaration required under subsection (1)(b), neither the qualifying term "when packed" nor words of similar import nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", and the like) that tends to exaggerate the amount of commodity in a package may be used.

(3) Under subsection (1)(b), the department shall by rule establish:

(a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure;

(b) exemptions as to small packages; and

(c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

(4) The marking provisions of this section do not apply to unwrapped loaves of bread or to berries and small fruits sold in conformance with part 4.

History: En. Sec. 19, Ch. 99, L. 1969; amd. Sec. 159, Ch. 431, L. 1975; R.C.M. 1947, 90-171.

Cross-References

Specific powers and duties of Department — rules, 30-12-202.

30-12-303. Declarations of unit price on random packages. In addition to the declarations required by 30-12-302, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

History: En. Sec. 20, Ch. 99, L. 1969; R.C.M. 1947, 90-172.

30-12-304. Misleading packages. A commodity in package form may not be wrapped or in a container made, formed, or filled so as to mislead the purchaser as to the quantity of the contents of the package. The contents of a container may not fall below a reasonable standard of fill which may be prescribed for that commodity by the department.

History: En. Sec. 21, Ch. 99, L. 1969; amd. Sec. 160, Ch. 431, L. 1975; R.C.M. 1947, 90-173.

Cross-References

Offenses and penalties, 30-12-504.

30-12-305. Advertising packages for sale. Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as required by law or regulation to appear on the package, provided:

(1) that where the law or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parenthesis on the package) need appear in the advertisement; and

(2) that there shall not be included as part of the declaration required under this section such qualifying terms as “when packed”, “minimum”, “not less than”, or any other terms of similar import or any term qualifying a unit of weight, measure, or count (for example, “jumbo”, “giant”, “full”, and the like) that tends to exaggerate the amount of commodity in the package.

History: En. Sec. 22, Ch. 99, L. 1969; R.C.M. 1947, 90-174.

30-12-306. Sale by net weight. When a commodity is sold on the basis of weight, the net weight of the commodity shall be employed and all contracts concerning commodities shall be so construed.

History: En. Sec. 23, Ch. 99, L. 1969; amd. Sec. 161, Ch. 431, L. 1975; R.C.M. 1947, 90-175.

Cross-References

Fractional parts of unit and value — construction of contracts, 30-12-106.

30-12-307. Misrepresentation of price. Whenever any commodity or service is sold or is offered, exposed, or advertised for sale by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of the numerals representing the whole cents.

History: En. Sec. 24, Ch. 99, L. 1969; R.C.M. 1947, 90-176.

Cross-References

Offenses and penalties, 30-12-504.

Part 4

Sale of Specific Commodities

30-12-401. Meat, poultry, and seafood. Except for immediate consumption on the premises where sold or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood, except shellfish, offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight and the quantity representation may be the total weight of the product or combination and a quantity representation need not be made for each of the several elements of the product or combination.

History: En. Sec. 25, Ch. 99, L. 1969; R.C.M. 1947, 90-177.

Cross-References

Method of sale of commodities — general, 30-12-301.

30-12-402. Repealed. Sec. 1, Ch. 15, L. 1999.

History: En. Sec. 26, Ch. 99, L. 1969; amd. Sec. 162, Ch. 431, L. 1975; R.C.M. 1947, 90-178.

30-12-403. Repealed. Sec. 1, Ch. 15, L. 1999.

History: En. Sec. 27, Ch. 99, L. 1969; R.C.M. 1947, 90-179.

30-12-404. Repealed. Sec. 1, Ch. 15, L. 1999.

History: En. Sec. 28, Ch. 99, L. 1969; amd. Sec. 1, Ch. 76, L. 1977; R.C.M. 1947, 90-180.

30-12-405. Repealed. Sec. 1, Ch. 15, L. 1999.

History: En. Sec. 29, Ch. 99, L. 1969; R.C.M. 1947, 90-181.

30-12-406. Bulk deliveries sold in terms of weight and delivered by vehicle. (1) When a vehicle delivers to an individual purchaser a commodity in bulk and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment and in clarity equal to type or printing:

(a) the name and address of the vendor;
(b) the name and address of the purchaser; and
(c) the net weight of the delivery expressed in pounds.

(2) If the net weight is derived from determinations of gross and tare weights, the gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity or shall be surrendered on demand to the department. If the department desires to retain it as evidence, it shall issue a weight slip in place of the ticket for delivery to the purchaser. If the purchaser himself carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him.

History: En. Sec. 30, Ch. 99, L. 1969; amd. Sec. 163, Ch. 431, L. 1975; R.C.M. 1947, 90-182.

Cross-References

Method of sale of commodities — general, 30-12-301.

Sale by net weight, 30-12-306.

30-12-407. Furnace and stove oil. All furnace and stove oil shall be sold by liquid measure or by net weight in accordance with the provisions of 30-12-301. In the case of each delivery of such liquid fuel not in package form and in an amount greater than 10 gallons in the case of sale by liquid measure or 100 pounds in the case of sale by weight, there shall be rendered to the purchaser, either at the time of delivery or within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or by means of other indelible marking equipment and in clarity equal to type or printing, there shall be clearly stated:

(1) the name and address of the vendor;
(2) the name and address of the purchaser;
(3) the identity of the type of fuel comprising the delivery;
(4) the unit price (that is, the price per gallon or per pound, as the case may be) of the fuel delivered;
(5) in the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and
(6) in the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

History: En. Sec. 31, Ch. 99, L. 1969; R.C.M. 1947, 90-183.

Cross-References

Approved measure required for part delivery, 82-15-108.

Full compartment sales — approval of meter, 82-15-109.

Unlawful acts, 82-15-110.

30-12-408. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of 1/2 dry pint, 1 dry pint, or 1 dry quart.

History: En. Sec. 32, Ch. 99, L. 1969; amd. Sec. 164, Ch. 431, L. 1975; R.C.M. 1947, 90-184.

Cross-References

Method of sale of commodities — general, 30-12-301.

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

30-12-409. Sale of gasoline and distillates on other than gross volume basis unlawful — exception. (1) Except as provided in subsection (2) or in Title 82, chapter 15, part 1, the sale, barter, or exchange of gasoline and distillates on a temperature corrected basis or on any basis other than the gross volume of gasoline or distillate actually delivered is void. Any contract in violation of this section shall be unenforceable to the extent of the violation.

(2) Suppliers of gasoline and distillates shall offer Montana petroleum wholesale distributors the option to buy gasoline and distillates either by gross volume actually delivered or on the assumption that the temperature of the product is 60 degrees Fahrenheit or the centigrade equivalent. This purchaser option may be exercised only on an annual basis and may be applied only to single deliveries of 7,500 gallons or more or the metric equivalent. Any adjustments to volume during the temperature compensation process must be made in accordance with standards set under 82-15-103, 82-15-108, and 82-15-109. Purchasers who choose to exercise the option available under this subsection must be provided with invoice listings of both net and gross gallons.

(3) This section does not apply to the exchange or transfer of gasoline and distillates between refiners or transporters of petroleum or petroleum products.

History: En. 13-812 by Sec. 1, Ch. 198, L. 1975; amd. Sec. 1, Ch. 274, L. 1977; R.C.M. 1947, 13-812; amd. Sec. 1, Ch. 166, L. 1983.

Cross-References

Approved measure required for part delivery, 82-15-108.

Full compartment sales — approval of meter, 82-15-109.

Unlawful acts, 82-15-110.

Part 5

Offenses and Penalties

30-12-501. Renumbered 30-12-106 by Code Commissioner, 1981.

30-12-502. Hindering or obstructing officer — penalties. A person who hinders or obstructs the department in any way in the performance of its official duties is guilty of a misdemeanor and upon conviction shall be fined not less than $20 or more than $200 or imprisoned not more than 3 months or both fined and imprisoned.

History: En. Sec. 34, Ch. 99, L. 1969; amd. Sec. 165, Ch. 431, L. 1975; R.C.M. 1947, 90-186.

Cross-References

General powers and duties of Department, 30-12-201.

Police powers, 30-12-210.

30-12-503. Impersonation of officer — penalties. A person who in any way impersonates a person charged with enforcement of parts 1 through 5 by the department, by the use of its seal or a counterfeit of its seal or in any other manner, is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned.

History: En. Sec. 35, Ch. 99, L. 1969; amd. Sec. 166, Ch. 431, L. 1975; R.C.M. 1947, 90-187.

Cross-References

General powers and duties of Department, 30-12-201.

Police powers, 30-12-210.

Impersonating public servant, 45-7-209.

30-12-504. Offenses and penalties. (1) A person may not:

(a) use or possess for the purpose of using for a commercial purpose specified in 30-12-205, sell, offer or expose for sale or hire, or possess for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(b) use or possess for the purpose of current use for a commercial purpose specified in 30-12-205 a weight or measure that does not bear a seal or mark specified in 30-12-209, unless that weight or measure has been exempted from testing by 30-12-205 or by a rule of the department issued under 30-12-202 or unless the device has been placed in service as provided by a rule of the department issued under 30-12-202. A person using weighing or measuring devices subject to parts 1 through 5 must report to the department, in writing, the number and location of the weighing or measuring device and must promptly report the installation of any new weighing or measuring device.

(c) dispose of a rejected or condemned weight or measure in a manner contrary to law or rule;

(d) remove from a weight or measure, contrary to law or rule, any tag, seal, or mark placed on it by the appropriate authority;

(e) sell or offer or expose for sale less than the quantity he represents of a commodity, thing, or service;

(f) take more than the quantity he represents of a commodity, thing, or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) keep for the purpose of sale, advertise or offer or expose for sale, or sell a commodity, thing, or service in a condition or manner contrary to law or rule;

(h) use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer;

(i) violate a provision of parts 1 through 5 or of the rules adopted under parts 1 through 5 for which a specific penalty is not prescribed.

(2) A person who violates, or who knowingly allows an employee or agent to violate, this section is guilty of a misdemeanor and upon a first conviction shall be fined not less than $20 or more than $200 or imprisoned for not more than 3 months or both fined and imprisoned. Upon a second or subsequent conviction, he shall be fined not less than $50 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned.

History: En. Sec. 36, Ch. 99, L. 1969; amd. Sec. 167, Ch. 431, L. 1975; R.C.M. 1947, 90-188.

Cross-References

Inspection of packages, 30-12-207.

Police powers, 30-12-210.

Duty of owners of incorrect apparatus, 30-12-211.

Dispensing of drugs, Title 37, ch. 2, part 1.

30-12-505. Injunction. The department may apply to any court of competent jurisdiction for, and that court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining a person from violating any provision of parts 1 through 5 of this chapter.

History: En. Sec. 37, Ch. 99, L. 1969; amd. Sec. 168, Ch. 431, L. 1975; R.C.M. 1947, 90-189.

Cross-References

Injunctions generally, Title 27, ch. 19.

Police powers, 30-12-210.

30-12-506. Presumptive evidence. For the purposes of parts 1 through 5, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on is, in the absence of credible evidence to the contrary, presumptive proof of the regular use of that weight or measure or weighing or measuring device for commercial purposes and of the use by the person in charge of the building, enclosure, stand, or vehicle.

History: En. Sec. 38, Ch. 99, L. 1969; amd. Sec. 169, Ch. 431, L. 1975; R.C.M. 1947, 90-190.

Cross-References

Police powers, 30-12-210.

30-12-507. Validity of prosecutions. Prosecutions for violation of any provision of parts 1 through 5 are declared to be valid and proper, notwithstanding the existence of any other valid general or specific law of this state dealing with matters that may be the same as or similar to those covered by parts 1 through 5.

History: En. Sec. 39, Ch. 99, L. 1969; R.C.M. 1947, 90-191.

Cross-References

Police powers, 30-12-210.

Part 6

Money of Account

30-12-601. Money of account. The money of account in this state is the dollar, cent, and mill. Public accounts and all proceedings in courts must be kept and had in conformity to this regulation.

History: En. Sec. 3150, Pol. C. 1895; re-en. Sec. 2033, Rev. C. 1907; re-en. Sec. 4283, R.C.M. 1921; Cal. Pol. C. Sec. 3272; re-en. Sec. 4283, R.C.M. 1935; R.C.M. 1947, 90-501.

Cross-References

Judgment — how amount expressed, 25-9-203.

Form and contents of writ, 25-13-301.

Money, 30-3-107.

30-12-602. Limitation. The provisions of 30-12-601 do not vitiate or affect any account, charge, or entry originally made or any note, bond, or other instrument expressed in any other money of account; but the same must be reduced to dollars and cents in any action.

History: En. Sec. 3151, Pol. C. 1895; re-en. Sec. 2034, Rev. C. 1907; re-en. Sec. 4284, R.C.M. 1921; Cal. Pol. C. Sec. 3273; re-en. Sec. 4284, R.C.M. 1935; R.C.M. 1947, 90-502.

Parts 7 through 9 reserved

Part 10

Paints — Labeling (Repealed. Sec. 1, Ch. 24, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

30-12-1001. En. Sec. 1, Ch. 69, L. 1959; Sec. 3-1510, R.C.M. 1947; amd. and redes. 90-701 by Sec. 80, Ch. 218, L. 1974; R.C.M. 1947, 90-701; amd. Sec. 2, Ch. 274, L. 1981.

30-12-1002. En. Sec. 4, Ch. 69, L. 1959; Sec. 3-1513, R.C.M. 1947; amd. and redes. 90-702 by Sec. 83, Ch. 218, L. 1974; R.C.M. 1947, 90-702; amd. Sec. 6, Ch. 137, L. 1979; amd. Sec. 2, Ch. 274, L. 1981.

30-12-1003. En. Sec. 5, Ch. 69, L. 1959; Sec. 3-1514, R.C.M. 1947; amd. and redes. 90-703 by Sec. 84, Ch. 218, L. 1974; R.C.M. 1947, 90-703; amd. Sec. 2, Ch. 274, L. 1981.

30-12-1004. En. Sec. 6, Ch. 69, L. 1959; Sec. 3-1515, R.C.M. 1947; amd. and redes. 90-704 by Sec. 85, Ch. 218, L. 1974; R.C.M. 1947, 90-704.

30-12-1005. En. Sec. 3, Ch. 69, L. 1959; Sec. 3-1512, R.C.M. 1947; amd. and redes. 90-705 by Sec. 82, Ch. 218, L. 1974; R.C.M. 1947, 90-705.

30-12-1006. En. Sec. 2, Ch. 69, L. 1959; Sec. 3-1511, R.C.M. 1947; amd. and redes. 90-706 by Sec. 81, Ch. 218, L. 1974; R.C.M. 1947, 90-706.

CHAPTER 13

ASSUMED BUSINESS NAMES, TRADEMARKS, AND RELATED RIGHTS

Part 1 — General Provisions

30-13-101 through 30-13-107. Repealed.
30-13-108 through 30-13-110 reserved.
30-13-111. Repealed.
30-13-112. Registration of farm and ranch names.
30-13-113 through 30-13-120 reserved.
30-13-121. Goodwill of business.
30-13-122. Goodwill transferable.
30-13-123 through 30-13-130 reserved.
30-13-131. Product of the mind — ownership.
30-13-132. Joint authorship.
30-13-133. Transfer.
30-13-134. Effect of publication.
30-13-135. Subsequent inventor or author.
30-13-136. Private writings.
30-13-137 through 30-13-140 reserved.
30-13-141. Definitions.
30-13-142. Unauthorized manufacture of sound recordings prohibited.
30-13-143. Sale of unauthorized sound recordings prohibited.
30-13-144. Sale of sound recording without name of manufacturer and name of performer or group prohibited.
30-13-145. Forfeiture.
30-13-146. Exceptions.
30-13-147. Civil litigation.

Part 2 — Assumed Business Names

30-13-201. Definitions.
30-13-202. Registration of assumed business name — when prohibited.
30-13-203. Application for registration of assumed business name.
30-13-204. Filing application for registration — issuance of certificate.
30-13-205. When registration of assumed business name by foreign corporation or foreign limited partnership prohibited.
30-13-206. Term and renewal of assumed business name registration.
30-13-207. Application for renewal of assumed business name.
30-13-208. Filing of application for renewal of registration of assumed business name — issuance of certificate thereon.

30-13-209. Amendment.
30-13-210. Filing amendment to registration of assumed business name — issuance of certificate.
30-13-211. Reservation of proposed assumed business name.
30-13-212. Filing application for reservation of assumed business name — issuance of certificate thereon.
30-13-213. Voluntary cancellation of registration of assumed business name.
30-13-214. Cancellation of registration of assumed business name upon dissolution of domestic corporation — withdrawal or revocation of foreign corporation's authority to transact business.
30-13-215. Effect of transacting business without certificate.
30-13-216. Evidentiary effect of certificates and documents of secretary of state.
30-13-217. Fees and charges to be established and collected by secretary of state.
30-13-218. Execution constituting affirmation — penalty — warning.
30-13-219 and 30-13-220 reserved.
30-13-221. Filing of facsimile copy.

Part 3 — Trademarks

30-13-301. Definitions.
30-13-302. When mark considered used in this state.
30-13-303. Registrability.
30-13-304 through 30-13-310 reserved.
30-13-311. Application for registration.
30-13-312. Filing application and issuing certificate of registration.
30-13-313. Duration and renewal.
30-13-314. Filing application for renewal of registration — issuing certificate of renewal.
30-13-315. Assignment.
30-13-316. Filing of assignment — issuing certificate of assignment.
30-13-317. Records.
30-13-318. Cancellation.
30-13-319. Execution constituting affirmation — penalty — warning.
30-13-320. Secretary of state to establish and collect fees commensurate with costs.
30-13-321 through 30-13-330 reserved.
30-13-331. Classification.
30-13-332. Fraudulent registration.
30-13-333. Infringement.
30-13-334. Injury to business reputation — dilution.
30-13-335. Remedies.
30-13-336. Common-law rights.
30-13-337 through 30-13-340 reserved.
30-13-341. Filing of facsimile copy.

Part 1
General Provisions

30-13-101 through 30-13-107. Repealed. Sec. 22, Ch. 429, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

30-13-101. En. Sec. 3160, Pol. C. 1895; re-en. Sec. 2036, Rev. C. 1907; re-en. Sec. 4286, R.C.M. 1921; Cal. Pol. C. Sec. 3196; re-en. Sec. 4286, R.C.M. 1935; R.C.M. 1947, 85-101.

30-13-102. En. Sec. 1370, Civ. C. 1895; re-en. Sec. 4565, Rev. C. 1907; re-en. Sec. 6812, R.C.M. 1921; Cal. Civ. C. Sec. 991; Based on Field Civ. C. Sec. 435; re-en. Sec. 6812, R.C.M. 1935; R.C.M. 1947, 67-1110.

30-13-103. En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2037, Rev. C. 1907; re-en. Sec. 4287, R.C.M. 1921; Cal. Pol. C. Sec. 3197; re-en. Sec. 4287, R.C.M. 1935; R.C.M. 1947, 85-102.

30-13-104. En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2038, Rev. C. 1907; re-en. Sec. 4288, R.C.M. 1921; Cal. Pol. C. Sec. 3198; amd. Sec. 1, Ch. 68, L. 1931; re-en. Sec. 4288, R.C.M. 1935; amd. Sec. 16, Ch. 117, L. 1961; R.C.M. 1947, 85-103.

30-13-105. En. Sec. 3163, Pol. C. 1895; re-en. Sec. 2039, Rev. C. 1907; re-en. Sec. 4289, R.C.M. 1921; Cal. Pol. C. Sec. 3199; re-en. Sec. 4289, R.C.M. 1935; R.C.M. 1947, 85-104.

30-13-106. En. Sec. 3300, Pol. C. 1895; re-en. Sec. 2103, Rev. C. 1907; re-en. Sec. 4291, R.C.M. 1921; re-en. Sec. 4291, R.C.M. 1935; R.C.M. 1947, 85-106.

30-13-107. (1)En. Sec. 3164, Pol. C. 1895; re-en. Sec. 2040, Rev. C. 1907; re-en. Sec. 4290, R.C.M. 1921; re-en. Sec. 4290, R.C.M. 1935; amd. Sec. 22, Ch. 513, L. 1973; amd. Sec. 6, Ch. 265, L. 1977; Sec. 85-105, R.C.M. 1947; (2)En. Sec. 3301, Pol. C. 1895; re-en. Sec. 2104, Rev. C. 1907; re-en. Sec. 4292, R.C.M. 1921; re-en. Sec. 4292, R.C.M. 1935; amd. Sec. 7, Ch. 265, L. 1977; Sec. 85-107, R.C.M. 1947; R.C.M. 1947, 85-105, 85-107.

30-13-108 through 30-13-110 reserved.

30-13-111. Repealed. Sec. 18, Ch. 260, L. 1979.

History: En. Sec. 3285, Civ. C. 1895; re-en. Sec. 5509, Rev. C. 1907; re-en. Sec. 8024, R.C.M. 1921; re-en. Sec. 8024, R.C.M. 1935; R.C.M. 1947, 63-606.

30-13-112. Registration of farm and ranch names. The owner of any farm or ranch in the state of Montana may, upon the payment of $1 to the county clerk and recorder in the county in which the farm or ranch may be situated, have the name of such farm or ranch entered and recorded in a register, which the county clerk and recorder shall keep for such purpose, and thereupon such owner shall be furnished a certificate by said clerk and recorder issued under the seal of said official, setting forth therein the name and location of the farm or ranch, and the name of such owner. When any name shall have been recorded as hereinbefore provided, any other person or persons shall not have the right to use the same name for any other farm or ranch in the same county, except by prefixing or adding thereto designating or other identifying words.

History: En. Sec. 1, Ch. 49, L. 1913; re-en. Sec. 6897, R.C.M. 1921; re-en. Sec. 6897, R.C.M. 1935; R.C.M. 1947, 73-109.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

30-13-113 through 30-13-120 reserved.

30-13-121. Goodwill of business. The goodwill of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

History: En. Sec. 1371, Civ. C. 1895; re-en. Sec. 4566, Rev. C. 1907; re-en. Sec. 6813, R.C.M. 1921; Cal. Civ. C. Sec. 992; Field Civ. C. Sec. 436; re-en. Sec. 6813, R.C.M. 1935; R.C.M. 1947, 67-1111.

Cross-References

Warranty on sale of goodwill, 30-11-221.

30-13-122. Goodwill transferable. The goodwill of a business is property, transferable like any other.

History: En. Sec. 1372, Civ. C. 1895; re-en. Sec. 4567, Rev. C. 1907; re-en. Sec. 6814, R.C.M. 1921; Cal. Civ. C. Sec. 993; Field Civ. C. Sec. 437; re-en. Sec. 6814, R.C.M. 1935; R.C.M. 1947, 67-1112.

Cross-References

Warranty on sale of goodwill, 30-11-221.

30-13-123 through 30-13-130 reserved.

30-13-131. Product of the mind — ownership. The author of any product of the mind, whether it is an invention, a composition in letters or art, or a design, with or without delineation or other graphical representation, has an exclusive ownership therein and in the representation or expression thereof which continues so long as the product and the representations or expressions thereof made by him remain in his possession.

History: En. Sec. 1360, Civ. C. 1895; re-en. Sec. 4559, Rev. C. 1907; re-en. Sec. 6806, R.C.M. 1921; Cal. Civ. C. Sec. 980; Field Civ. C. Sec. 429; re-en. Sec. 6806, R.C.M. 1935; R.C.M. 1947, 67-1104.

Cross-References

State ownership of work of art, 22-2-407.

Sale of fine art by dealer and rights of artist, Title 22, ch. 2, part 5.

30-13-132. Joint authorship. Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned is owned by them as follows:

(1) if the product is single, in equal proportions;

(2) if it is not single, in proportion to the contribution of each.

History: En. Sec. 1361, Civ. C. 1895; re-en. Sec. 4560, Rev. C. 1907; re-en. Sec. 6807, R.C.M. 1921; Cal. Civ. C. Sec. 981; Field Civ. C. Sec. 430; re-en. Sec. 6807, R.C.M. 1935; R.C.M. 1947, 67-1105.

30-13-133. Transfer. The owner of any product of the mind or of any representation or expression thereof may transfer his interest in the same.

History: En. Sec. 1362, Civ. C. 1895; re-en. Sec. 4561, Rev. C. 1907; re-en. Sec. 6808, R.C.M. 1921; Cal. Civ. C. Sec. 982; Field Civ. C. Sec. 431; re-en. Sec. 6808, R.C.M. 1935; R.C.M. 1947, 67-1106; amd. Sec. 7, Ch. 137, L. 1979.

30-13-134. Effect of publication. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person without responsibility to the owner, so far as the law of this state is concerned.

History: En. Sec. 1363, Civ. C. 1895; re-en. Sec. 4562, Rev. C. 1907; re-en. Sec. 6809, R.C.M. 1921; Cal. Civ. C. Sec. 983; Field Civ. C. Sec. 432; re-en. Sec. 6809, R.C.M. 1935; R.C.M. 1947, 67-1107.

30-13-135. Subsequent inventor or author. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author or those claiming under him.

History: En. Sec. 1364, Civ. C. 1895; re-en. Sec. 4563, Rev. C. 1907; re-en. Sec. 6810, R.C.M. 1921; Cal. Civ. C. Sec. 984; Field Civ. C. Sec. 433; re-en. Sec. 6810, R.C.M. 1935; R.C.M. 1947, 67-1108.

30-13-136. Private writings. Letters and other private communications in writing belong to the person to whom they are addressed and delivered, but they cannot be published against the will of the writer except by authority of law.

History: En. Sec. 1365, Civ. C. 1895; re-en. Sec. 4564, Rev. C. 1907; re-en. Sec. 6811, R.C.M. 1921; Cal. Civ. C. Sec. 985; Field Civ. C. Sec. 434; re-en. Sec. 6811, R.C.M. 1935; R.C.M. 1947, 67-1109.

Cross-References

Writings — definitions of public and private, 2-6-701.

30-13-137 through 30-13-140 reserved.

30-13-141. Definitions. As used in 30-13-141 through 30-13-147, the following definitions apply:

(1) "Owner" means the person who owns the original fixation of sounds embodied in a master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.

(2) "Performer" means the person or persons appearing in a performance.

(3) "Person" means any individual, firm, partnership, limited liability company, corporation, or association.

(4) "Sound recording" means a phonograph record, disc, wire, tape, film, or other article on which sound is recorded.

History: **En. Sec. 1, Ch. 367, L. 1977; R.C.M. 1947, 85-601; amd. Sec. 79, Ch. 120, L. 1993.**

30-13-142. Unauthorized manufacture of sound recordings prohibited. (1) No person may knowingly, without the consent of the owner, transfer or cause to be transferred any sounds recorded on a sound recording with the intent to sell or cause to be sold for profit any sound recordings onto which such sounds are transferred or to use such sound recordings to promote the sale of any product.

(2) No person may knowingly and without the consent of the performer transfer or cause to be transferred to any sound recording any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or to be used to promote the sale of any product such sound recording onto which such performance is so transferred.

(3) A person convicted of violating this section shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: **En. Sec. 2, Ch. 367, L. 1977; R.C.M. 1947, 85-602; amd. Sec. 7, Ch. 198, L. 1981.**

Cross-References

Trademarks, Title 30, ch. 13, part 3.

Unfair trade practices and consumer protection, Title 30, ch. 14.

30-13-143. Sale of unauthorized sound recordings prohibited. (1) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording that has been produced without the consent of the owner. Possession of 5 or more duplicate copies or 20 or more individual copies of such sound recording produced without the consent of the owner creates a rebuttable presumption that the copies are intended for sale or distribution in violation of this section.

(2) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recordings embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, without the prior express written consent of the performer.

(3) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. Sec. 3, Ch. 367, L. 1977; R.C.M. 1947, 85-603.**

Cross-References

Trademarks, Title 30, ch. 13, part 3.

Unfair trade practices and consumer protection, Title 30, ch. 14.

30-13-144. Sale of sound recording without name of manufacturer and name of performer or group prohibited. (1) No person may advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording unless the outside cover, box, or jacket clearly and conspicuously discloses the name and address of its manufacturer and the name of the performer actually producing the sounds recorded.

(2) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. Sec. 4, Ch. 367, L. 1977; R.C.M. 1947, 85-604.**

Cross-References

Trademarks, Title 30, ch. 13, part 3.

Unfair trade practices and consumer protection, Title 30, ch. 14.

30-13-145. Forfeiture. Any article produced in violation of 30-13-142 through 30-13-144 and any equipment used to produce it are subject to forfeiture to and destruction by the appropriate law enforcement agency.

History: En. Sec. 5, Ch. 367, L. 1977; R.C.M. 1947, 85-605.

30-13-146. Exceptions. Sections 30-13-141 through 30-13-147 do not apply to:

(1) any broadcaster who, in connection with a radio, television, or cable broadcast transmission or for the purpose of archival preservation, transfers any sounds recorded on a sound recording;

(2) any person who transfers such sounds in the home for personal use, without compensation; or

(3) any person who transfers a single copy of such sounds for bona fide educational purposes, provided that no person directly or indirectly derives any pecuniary gain from such transfer.

History: En. Sec. 6, Ch. 367, L. 1977; R.C.M. 1947, 85-606.

30-13-147. Civil litigation. Sections 30-13-141 through 30-13-147 neither enlarge nor diminish the rights of parties in civil litigation.

History: En. Sec. 7, Ch. 367, L. 1977; R.C.M. 1947, 85-607.

Part 2

Assumed Business Names

Part Cross-References

Business corporations — corporate names, Title 35, ch. 1, part 3.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Rural cooperative utility names, 35-18-201.

30-13-201. Definitions. As used in this part, the following definitions apply:

(1) "Assumed business name" means:

(a) any business name other than the full, true, and correct name of a person; or

(b) the full, true, and correct name of a limited liability partnership.

(2) "Person" means any individual, partnership, corporation, or other association.

History: En Sec. 1, Ch. 260, L. 1979; amd. Sec. 1, Ch. 449, L. 1995.

30-13-202. Registration of assumed business name — when prohibited. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is other than a corporation, limited partnership, limited liability company, or limited liability partnership, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of the words.

History: En Sec. 2, Ch. 260, L. 1979; amd. Sec. 134, Ch. 575, L. 1981; amd. Sec. 1, Ch. 455, L. 1983; amd. Sec. 80, Ch. 120, L. 1993; amd. Sec. 2, Ch. 449, L. 1995.

Cross-References

Registration of ranch and farm names, 30-13-112.

30-13-203. Application for registration of assumed business name. A person transacting business in this state under an assumed business name shall register with the secretary of state, on forms furnished by the secretary of state or by electronic means established by the board of review established in 30-16-302, an application for registration of the assumed business name, including but not limited to the following information:

(1) the name and address, including the street name and number, of applicant;

(2) the complete name of the proposed assumed business name;

(3) the date of first use, in commerce, of the proposed assumed business name; and

(4) a description of business transacted under the proposed assumed name.

History: En Sec. 3, Ch. 260, L. 1979; amd. Sec. 2, Ch. 174, L. 1983; amd. Sec. 5, Ch. 366, L. 1997; amd. Sec. 1, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 deleted former (5) that read: "(5) the name of county or counties in which business is being transacted"; and made minor changes in style. Amendment effective April 2, 1999.

30-13-204. Filing application for registration — issuance of certificate. (1) One original and one copy of application for registration of an assumed business name shall be executed and delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of registration, to which he shall affix the copy.

(2) The certificate of registration, together with the copy of the application for registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

(3) The registration of an assumed business name remains in effect until canceled.

History: En Sec. 4, Ch. 260, L. 1979; amd. Sec. 1, Ch. 131, L. 1983.

30-13-205. When registration of assumed business name by foreign corporation or foreign limited partnership prohibited. No foreign corporation or foreign limited partnership which does not have an effective certificate of authority or certificate of registration to transact business in this state may register an assumed business name as provided for in this part.

History: En Sec. 5, Ch. 260, L. 1979; amd. Sec. 2, Ch. 455, L. 1983.

30-13-206. Term and renewal of assumed business name registration. (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state or by electronic means established by rule by the board of review established in 30-16-302, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the last-known address of the applicant.

(3) (a) Subject to subsection (3)(b), if the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration.

(b) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall again notify the limited liability partnership of the pending expiration and give the limited liability partnership an additional 90 days within which to renew its registration. If the limited liability partnership fails to renew its registration within the second 90-day period, the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership.

History: En Sec. 6, Ch. 260, L. 1979; amd. Sec. 3, Ch. 449, L. 1995; amd. Sec. 6, Ch. 366, L. 1997.

Cross-References

Limited liability company — administrative dissolution — rules, 35-8-209.

30-13-207. Application for renewal of assumed business name. One original and one copy of an application for renewal of registration of an assumed business name must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

(1) the complete assumed business name;

(2) the name and address, including street name and number, if any, of the applicant; and

(3) a description of business transacted.

History: En Sec. 7, Ch. 260, L. 1979; amd. Sec. 2, Ch. 131, L. 1983; amd. Sec. 3, Ch. 174, L. 1983; amd. Sec. 2, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 deleted former (4) that read: "(4) the name of the county or counties in which business is being transacted"; and made minor changes in style. Amendment effective April 2, 1999.

30-13-208. Filing of application for renewal of registration of assumed business name — issuance of certificate thereon. (1) If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of renewal, to which he shall affix the copy.

(2) The certificate of renewal, together with the copy of the application for renewal of registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

History: En Sec. 8, Ch. 260, L. 1979; amd. Sec. 3, Ch. 131, L. 1983.

30-13-209. Amendment. An amendment to registration of an assumed business name must be filed with the secretary of state within 1 year after any one of the following events occurs:

(1) there is a change in the name or identity of the person or persons transacting or having interest in the business for which the name is registered;

(2) there is a change in the description of the business transacted;

(3) a person having an interest in the business with a registered assumed business name withdraws from the business or dies; or

(4) the registrant wishes to change the name of a registered assumed business name.

History: En Sec. 9, Ch. 260, L. 1979; amd. Sec. 4, Ch. 449, L. 1995; amd. Sec. 3, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 in (2) substituted "description of the business transacted" for "identity of the county or counties in which the name is or is intended to be used". Amendment effective April 2, 1999.

30-13-210. Filing amendment to registration of assumed business name — issuance of certificate. (1) One original and one copy of an amendment to the registration of an assumed business name must be delivered to the secretary of state. The application for amended registration of an assumed business name must include but is not limited to the following information:

(a) complete assumed business name prior to adoption of amendment;

(b) complete new assumed business name, if applicable;

(c) name and address of the registrant, including street name and number of the business office;

(d) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the person having an interest in the business with the registered assumed business name;

(e) if a person or persons having an interest in a business with a registered assumed name withdraws or dies, a statement of that fact; and

(f) a statement that the amended registration of assumed business name supersedes the original registration and all amendments to the original registration.

(2) If the secretary of state finds that the application for amended registration of the assumed business name complies with this part, the secretary of state shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing;

(b) file the original in the secretary of state's office; and

(c) issue a certificate of amendment, to which the secretary of state shall affix the copy.

(3) The certificate of amendment, together with the copy of the amendment required in subsection (1), must be returned to the registrant.

(4) The failure of the registrant of an assumed business name to comply with the requirements of this section results in the cancellation by the secretary of state of the registration.

History: En Sec. 10, Ch. 260, L. 1979; amd. Sec. 4, Ch. 131, L. 1983; amd. Sec. 7, Ch. 366, L. 1997; amd. Sec. 4, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 deleted former (1)(e) and (1)(f) that read: "(e) the name of the county or counties in which the name is being used;

(f) if there is a change in the identity of the county or counties or addition of a county or counties in which the assumed business name is being used or is to be used, the name of the new county or counties"; and made minor changes in style. Amendment effective April 2, 1999.

30-13-211. Reservation of proposed assumed business name. Any authorized person who has not commenced business but intends to commence business may reserve an assumed business name that is not in conflict with the provisions of 30-13-202 for a term of 120 days by delivering to the secretary of state, on forms furnished by the secretary of state, an application for reservation of an assumed business name, including but not limited to the following information:

(1) the complete assumed business name to be reserved;

(2) the name and address, including street name and number, if any, of the applicant;

(3) the date the applicant intends to commence business; and

(4) a description of business the applicant intends to transact.

History: En Sec. 11, Ch. 260, L. 1979; amd. Sec. 5, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 deleted former (5) that read: "(5) the county or counties in which applicant intends to conduct business"; and made minor changes in style. Amendment effective April 2, 1999.

Cross-References

Limited liability company — reservation of name, 35-8-104.

Limited partnership — reservation of name, 35-12-506.

30-13-212. Filing application for reservation of assumed business name — issuance of certificate thereon. (1) One original and one copy of an application for reservation of an assumed business name, duly executed by the applicant, shall be delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of reservation, to which he shall affix the copy.

(2) The certificate of reservation, together with the copy of the application for reservation of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

History: En Sec. 12, Ch. 260, L. 1979; amd. Sec. 5, Ch. 131, L. 1983; amd. Sec. 4, Ch. 174, L. 1983.

30-13-213. Voluntary cancellation of registration of assumed business name. (1) When the registrant of record of a registered assumed business name wishes to cancel the registration, the registrant shall deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of an assumed business name, which must include but not be limited to the following information:

(a) the complete name of the registered assumed business name to be canceled; and

(b) the name and address, including the street name and number, if any, of the registrant of record.

(2) If the secretary of state finds the affidavit complies with the provisions of this section, the secretary of state shall file it and mail a letter acknowledging cancellation of the filing to the registrant of record.

History: En Sec. 13, Ch. 260, L. 1979; amd. Sec. 5, Ch. 449, L. 1995.

30-13-214. Cancellation of registration of assumed business name upon dissolution of domestic corporation — withdrawal or revocation of foreign corporation's authority to transact business. (1) If the only party of interest of an assumed business name is a domestic corporation which has been dissolved, the secretary of state shall cancel the registration.

(2) If the only party of interest of an assumed business name is a foreign corporation whose authority to transact business in this state has been withdrawn or revoked, the secretary of state shall cancel the registration.

History: En Sec. 14, Ch. 260, L. 1979.

30-13-215. Effect of transacting business without certificate. No person or persons conducting or transacting business in this state without an effective certificate of registration of an assumed business name or having any interest therein may maintain any suit or action in any of the courts of this state under such name.

History: En Sec. 15, Ch. 260, L. 1979.

30-13-216. Evidentiary effect of certificates and documents of secretary of state. All certificates issued by the secretary of state in accordance with the provisions of this part and all copies of documents filed in his office in accordance with the provisions of this part when certified by him shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated therein.

History: En Sec. 16, Ch. 260, L. 1979.

Cross-References

Entries in official books and records prima facie evidence, 26-1-605.

30-13-217. Fees and charges to be established and collected by secretary of state. (1) The secretary of state shall by administrative rule establish, charge, and collect in accordance with the provisions of this part and commensurate with costs:

(a) fees for filing documents and issuing certificates; and

(b) miscellaneous charges.

(2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this section.

(3) In addition to the fees and charges in subsection (1), the secretary of state shall charge and collect from each limited liability partnership a license fee of:

(a) $50 at the time of registration under 30-13-203; and

(b) $50 at the time of each renewal of registration under 30-13-206 through 30-13-208.

(4) Fees and charges established under this section may be paid by credit card and may be discounted for payment processing charges paid by the secretary of state to a third party.

History: En Sec. 17, Ch. 260, L. 1979; amd. Sec. 3, Ch. 119, L. 1985; amd. Sec. 6, Ch. 449, L. 1995; amd. Sec. 8, Ch. 366, L. 1997.

30-13-218. Execution constituting affirmation — penalty — warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this part.

History: En. Sec. 1, Ch. 174, L. 1983.

Cross-References

False swearing, 45-7-202.

30-13-219 and 30-13-220 reserved.

30-13-221. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989; amd. Sec. 3, Ch. 290, L. 1997.

Part 3

Trademarks

30-13-301. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Applicant" means the person filing an application for registration of a trademark under this part or the person's legal representatives, successors, or assigns.

(2) "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.

(3) "Person" means any individual, firm, partnership, limited liability company, corporation, association, union, or other organization.

(4) "Registrant" means the person to whom the registration of a trademark under this part is issued or the person's legal representatives, successors, or assigns.

(5) "Service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(6) "Trade name" means a word, name, symbol, device, or any combination thereof used by a person to identify the person's business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

(7) "Trademark" means any word, name, symbol, device, or any combination thereof adopted and used by a person to identify goods made or sold by the person and to distinguish them from goods made or sold by others.

History: En. Sec. 1, Ch. 429, L. 1979; amd. Sec. 81, Ch. 120, L. 1993.

30-13-302. When mark considered used in this state. For purposes of this part, a mark is considered to be used in this state:

(1) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in the state; and

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

History: En. Sec. 2, Ch. 429, L. 1979.

30-13-303. Registrability. (1) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others may not be registered if it:

(a) comprises immoral, deceptive, or scandalous matter; or

(b) comprises matter which may disparage or falsely suggest a connection with persons, living or dead, or institutions, beliefs, or national symbols or bring them into contempt or disrepute; or

(c) comprises the flag or coat of arms or other insignia of the United States, of any state or municipality, or of any foreign nation or any simulation thereof; or

(d) comprises the name, signature, or portrait of any living individual, except with his written consent; or

(e) comprises a mark that:

(i) when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(ii) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

(iii) is primarily merely a surname; or

(f) comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) However, nothing in subsection (1)(e) prevents the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the 5 years immediately preceding the date of the filing of the application for registration.

History: En. Sec. 3, Ch. 429, L. 1979.

30-13-304 through 30-13-310 reserved.

30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who adopts and uses a mark in this state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for registration and, if a corporation, the state of incorporation or, if a limited liability company, the state of organization;

(b) the essential feature of the mark to be registered;

(c) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with the goods or services and the class in which the goods or services fall;

(d) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or the applicant's predecessor in business;

(e) a statement that the mark is presently in use in this state by the applicant; and

(f) a statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken for it.

(2) The application must be signed by the applicant or a member of the firm or limited liability company or an officer of the corporation or association applying.

(3) The application must be accompanied by two copies of a specimen or facsimile of the mark.

(4) The application for registration must be accompanied by a filing fee as provided for in 30-13-320.

History: En. Sec. 4, Ch. 429, L. 1979; amd. Sec. 6, Ch. 131, L. 1983; amd. Sec. 6, Ch. 174, L. 1983; amd. Sec. 4, Ch. 119, L. 1985; amd. Sec. 82, Ch. 120, L. 1993.

30-13-312. Filing application and issuing certificate of registration. (1) One original and one copy of an application for registration of a mark must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of registration to which he shall affix the copy.

(2) The certificate of registration, together with the copy of the application for registration of mark affixed thereto, shall be returned to the applicant.

(3) Any certificate of registration issued by the secretary of state under the provisions of this section or a copy thereof duly certified by the secretary of state is admissible in evidence as competent and sufficient proof of the registration of such mark in any judicial proceeding in any court of this state.

History: En. Sec. 5, Ch. 429, L. 1979; amd. Sec. 7, Ch. 131, L. 1983.

30-13-313. Duration and renewal. (1) Registration of a mark under this part is effective for a term of 10 years from the date of registration, and upon application filed within 6 months prior to the expiration of such term, the registration may be renewed for another 10 years.

(2) An application for renewal of mark registration must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and business address of the applicant;

(b) a description of the mark; and

(c) a statement that the mark is still in use by the applicant in this state.

(3) The application for renewal of mark registration must be signed by the applicant.

(4) The application for renewal of mark registration must be accompanied by a filing fee as provided for in 30-13-320.

History: En. Sec. 6, Ch. 429, L. 1979; amd. Sec. 7, Ch. 174, L. 1983; amd. Sec. 5, Ch. 119, L. 1985.

30-13-314. Filing application for renewal of registration — issuing certificate of renewal. (1) One original and one copy of an application for renewal of mark registration must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of registration to which he shall affix the copy.

(2) The certificate of renewal of registration, together with the copy of the application for renewal of mark registration affixed thereto, shall be returned to the applicant.

(3) A mark registration may be renewed for successive periods of 10 years in the manner provided for in subsections (1) and (2).

(4) The secretary of state shall notify registrants of marks of the necessity of renewal within the year immediately preceding the expiration of the 10 years from the date of registration, by writing to the last-known address of the registrants.

(5) Any registration in force on July 1, 1979, expires 10 years from the date of the registration or from the date of the last renewal thereof or on July 1, 1980, whichever is later, if renewal of mark registration is not effected in the manner provided for in this part.

(6) The secretary of state shall, by January 1, 1981, notify each person who registered a mark prior to July 1, 1980, of the date of expiration of such registration unless renewed in accordance with the provisions of this part, by writing to the last-known address of the registrant.

History: En. Sec. 7, Ch. 429, L. 1979; amd. Sec. 8, Ch. 131, L. 1983.

30-13-315. Assignment. (1) Any mark and its registration under this part may be assigned in conjunction with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark for the remainder of the term of the current registration. An assignment of any registration under this part is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within 3 months after the date of the assignment or prior to such subsequent purchase.

(2) One original and one copy of an assignment of a mark must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and address of the assignor;

(b) the name and address of the assignee;

(c) the registration number of the mark; and

(d) the date of registration.

(3) The assignment of a mark must be signed and verified by the assignor.

(4) The assignment of a mark must be accompanied by a filing fee as provided for in 30-13-320.

History: En. Sec. 8, Ch. 429, L. 1979; amd. Sec. 9, Ch. 131, L. 1983; amd. Sec. 6, Ch. 119, L. 1985.

30-13-316. Filing of assignment — issuing certificate of assignment. (1) One original and one copy of the assignment of a mark must be delivered to the secretary of state. If the secretary of state finds that the assignment complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of assignment to which he shall affix the copy.

(2) The certificate of assignment, together with the copy of assignment of a mark affixed thereto, shall be returned to the assignee.

History: En. Sec. 9, Ch. 429, L. 1979; amd. Sec. 10, Ch. 131, L. 1983.

30-13-317. Records. The secretary of state shall keep for public examination a record of all marks registered or renewed under this part.

History: En. Sec. 10, Ch. 429, L. 1979.

30-13-318. Cancellation. The secretary of state shall cancel from the register:

(1) after July 1, 1981, each registration made prior to July 1, 1980, that is more than 10 years old and not renewed in accordance with this part;

(2) any registration for which he receives a written request for cancellation, signed and verified by the registrant or the assignee of record and accompanied by fees as prescribed in this part;

(3) each registration granted under this part and not renewed in accordance with the provisions of this part;

(4) any registration concerning which a court of competent jurisdiction finds that:

(a) the registered mark has been abandoned;

(b) the registrant is not the owner of the mark;

(c) the registration was granted improperly;

(d) the registration was obtained fraudulently;

(e) the registered mark is so similar to a mark currently registered by another person in the United States patent and trademark office prior to the filing date of the application for registration under this part as to be likely to cause confusion or mistake or to deceive. However, if the registrant proves that he is the owner of a concurrent registration of his mark in the United States patent and trademark office covering an area including this state, the registration under this part may not be canceled.

(5) a registration ordered canceled by a court of competent jurisdiction on any grounds.

History: En. Sec. 11, Ch. 429, L. 1979; amd. Sec. 8, Ch. 174, L. 1983.

30-13-319. Execution constituting affirmation — penalty — warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this part.

History: En. Sec. 5, Ch. 174, L. 1983.

Cross-References

False swearing, 45-7-202.

30-13-320. Secretary of state to establish and collect fees commensurate with costs. The secretary of state shall by administrative rule establish and provide for collection of fees and miscellaneous charges for filing documents and issuing certificates as required by this part. The fees must be commensurate with the costs of processing the documents and certificates. The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this part.

History: En. Sec. 1, Ch. 119, L. 1985.

Cross-References

Duties of Secretary of State, 2-15-401.

30-13-321 through 30-13-330 reserved.

30-13-331. Classification. (1) The following general classes of goods and services are established for convenience of administration of this part. This classification does not limit or extend the applicant's or registrant's rights. A single application for registration of a mark may include any or all goods or services comprised in a single class with regard to which the mark is actually being used. However, in no event may a single application include goods or services that fall within different classes of goods or services.

(2) The classes of goods are as follows:
(a) raw or partly prepared materials;
(b) receptacles;
(c) baggage, animal equipments, portfolios, and pocketbooks;
(d) abrasive and polishing materials;
(e) adhesives;
(f) chemicals and chemical compositions;
(g) cordage;
(h) smokers' articles, not including tobacco products;
(i) explosives, firearms, equipment, and projectiles;
(j) fertilizers;
(k) inks and inking materials;
(l) construction materials;
(m) hardware and plumbing and steamfitting supplies;
(n) metals and metal casting and forgings;
(o) oils and greases;
(p) paints and painters' materials;
(q) tobacco products;
(r) medicines and pharmaceutical preparations;
(s) vehicles;
(t) linoleum and oil cloth;
(u) electrical apparatus, machines, and supplies;
(v) games, toys, and sporting goods;
(w) cutlery, machinery, and tools, and parts thereof;
(x) laundry appliances and machines;
(y) locks and safes;
(z) measuring and scientific appliances;
(aa) horological instruments;
(bb) jewelry and precious metal ware;
(cc) brooms, brushes, and dusters;
(dd) crockery, earthenware, and porcelain;
(ee) filters and refrigerators;
(ff) furniture and upholstery;
(gg) glassware;
(hh) heating, lighting, and ventilating apparatus;
(ii) belting, hose, machinery packing, and nonmetallic tires;
(jj) musical instruments and supplies;
(kk) paper and stationery;
(ll) prints and publications;
(mm) clothing;
(nn) fancy goods, furnishings, and notions;
(oo) canes, parasols, and umbrellas;

(pp) knitted, netted, and textile fabrics, and substitutes therefor;
(qq) thread and yarn;
(rr) dental, medical, and surgical appliances;
(ss) soft drinks and carbonated waters;
(tt) foods and ingredients of foods;
(uu) wines;
(vv) malt beverages and liquors;
(ww) distilled alcoholic liquors;
(xx) merchandise not otherwise classified;
(yy) cosmetics and toilet preparations;
(zz) detergents and soaps.
(3) The classes of services are as follows:
(a) miscellaneous;
(b) advertising and business;
(c) insurance and financial;
(d) construction and repair;
(e) communications;
(f) transportation and storage;
(g) material treatment;
(h) education and entertainment.

History: En. Sec. 12, Ch. 429, L. 1979.

30-13-332. Fraudulent registration. Any person who, for himself or on behalf of any other person, procures the filing or registration of any mark in the office of the secretary of state under the provisions of this part by knowingly making any false or fraudulent representation, verbally or in writing or by any other fraudulent means, is liable to pay all damages sustained in consequence of such filing or registration. Such damages may be recovered by or on behalf of the injured party in any court of competent jurisdiction.

History: En. Sec. 13, Ch. 429, L. 1979.

30-13-333. Infringement. (1) Subject to the provisions of 30-13-336, any person is liable in a civil action brought by the lawful owner of a registered mark under 30-13-335 if such person:

(a) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(b) reproduces, counterfeits, copies, or colorably imitates any such mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services.

(2) However, the registrant is not entitled to recover under subsection (1)(b) any profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

History: En. Sec. 14, Ch. 429, L. 1979.

30-13-334. Injury to business reputation — dilution. Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under this part or a mark valid at common law or a trade name valid at common law is grounds for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

History: En. Sec. 15, Ch. 429, L. 1979.

30-13-335. Remedies. (1) Any owner of a mark registered under this part may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark. Any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as is considered by the court to be just and reasonable. The court may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale. The court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court or to the complainant to be destroyed.

(2) The enumeration in this part of any right or remedy does not affect a registrant's right to prosecute under any criminal law of this state.

History: En. Sec. 16, Ch. 429, L. 1979.

30-13-336. Common-law rights. Nothing in this part adversely affects the rights or the enforcement of rights in marks acquired at common law in good faith at any time.

History: En. Sec. 17, Ch. 429, L. 1979.

Cross-References

Common-law applicability, 1-1-108.

30-13-337 through 30-13-340 reserved.

30-13-341. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989; amd. Sec. 4, Ch. 290, L. 1997.

CHAPTER 14

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

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Chapter Cross-References

Protection of consumers from unfair practices of corporations, Art. XIII, sec. 1, Mont. Const.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

Part 1

Consumer Protection Act

Part Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.

Policy of Montana Alcoholic Beverage Code, 16-1-101.

Policy of The Montana Cigarette Sales Act, 16-10-102.

Violation of consumer reporting agencies' law as violation of part, 31-3-153.

Montana Consumer Product Safety Act of 1975, Title 50, ch. 30.

30-14-101. Short title. This part shall be cited as the "Montana Unfair Trade Practices and Consumer Protection Act of 1973".

History: En. Sec. 19, Ch. 275, L. 1973; R.C.M. 1947, 85-418.

30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of commerce created in 2-15-1801.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) "Examination" of documentary material includes the inspection, study, or copying of such material and the taking of testimony under oath or acknowledgment in respect to any such documentary material or copy thereof.

(4) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this state.

History: En. Sec. 1, Ch. 275, L. 1973; R.C.M. 1947, 85-401; amd. Sec. 2, Ch. 274, L. 1981.

30-14-103. Unlawful practices. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

History: En. Sec. 2, Ch. 275, L. 1973; R.C.M. 1947, 85-402.

Cross-References

Violation of consumer reporting agencies' law as violation of part, 31-3-153.

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Chain distributor schemes, 45-6-319.

Illegal branding or altering or obscuring of brand, 45-6-327.

30-14-104. Federal interpretation — rules determining unfair competition and deception. (1) It is the intent of the legislature that in construing 30-14-103 due consideration and weight shall be given to the interpretations of the federal trade commission and the federal courts relating to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

(2) The department may make rules interpreting the provisions of 30-14-103. Such rules shall not be inconsistent with the rules, regulations, and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

History: En. Sec. 3, Ch. 275, L. 1973; R.C.M. 1947, 85-403.

30-14-105. Exemptions. Nothing in this part shall apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission acting under statutory authority of this part or the United States;

(2) acts done by the retail merchants, publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station or advertising agency in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement and did not have a direct financial interest in the advertised product or service;

(3) national advertising.

History: En. Sec. 4, Ch. 275, L. 1973; R.C.M. 1947, 85-404.

30-14-106 through 30-14-110 reserved.

30-14-111. Department to restrain unlawful acts. (1) Whenever the department has reason to believe that any person is using, has used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction or temporary restraining order the use of such method, act, or practice, upon the giving of appropriate notice to that person.

(2) The notice must state generally the relief sought and be served in accordance with 30-14-115 at least 20 days before the hearing of the action where the relief to be sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) The action may be brought in the district court in which such person resides or has his principal place of business or, with consent of the parties, may be brought in the district court of Lewis and Clark County.

(4) The courts are authorized to issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part, and such injunctions shall be issued without bond.

History: En. Sec. 5, Ch. 275, L. 1973; R.C.M. 1947, 85-405; amd. Sec. 1, Ch. 394, L. 1979.

Cross-References

Enforcement by Department, 30-14-220.

30-14-112. Assurance of compliance. In the administration of this part, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice considered to be violative of this part from any person who has engaged or was about to engage in any such method, act, or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or the district court of Lewis and Clark County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to 30-14-111.

History: En. Sec. 9, Ch. 275, L. 1973; amd. Sec. 10, Ch. 265, L. 1977; R.C.M. 1947, 85-409.

30-14-113. Investigative demand. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge or to appear and testify or produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale, or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date or to modify or set aside the demand, stating good cause, may be filed in the district court of the county in which the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark County.

History: En. Sec. 10, Ch. 275, L. 1973; amd. Sec. 11, Ch. 265, L. 1977; R.C.M. 1947, 85-410.

Cross-References

Investigations, 30-14-221.

30-14-114. Department authority. To accomplish the objectives and to carry out the duties prescribed by this part, the department, in addition to other powers conferred upon it by this part, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms, and promulgate rules as may be necessary, which rules shall have the force of law; provided that none of the powers conferred by this part may be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture. Information obtained pursuant to the powers conferred by this part shall not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

History: En. Sec. 11, Ch. 275, L. 1973; R.C.M. 1947, 85-411.

Cross-References

Investigations, 30-14-221.

30-14-115. Service of process — how made. Service of any notice, demand, or subpoena under this part shall be made personally within this state, but if such cannot be obtained, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 275, L. 1973; R.C.M. 1947, 85-412.

Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

30-14-116 through 30-14-120 reserved.

30-14-121. Duties of county attorney and attorney general. It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this part. The county attorney or the attorney general, on request of the department or a county attorney, may initiate all procedures and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone or the attorney general on request of the county attorney, the person prosecuting shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney or attorney general shall make a report thereon to the department within 30 days of the final disposition of the matter.

History: En. Sec. 16, Ch. 275, L. 1973; amd. Sec. 1, Ch. 407, L. 1977; R.C.M. 1947, 85-416.

30-14-122. Employment of investigator by county attorney. The county attorney in first- and second-class counties may designate an employee to act as a full-time investigator.

History: En. Sec. 17, Ch. 275, L. 1973; R.C.M. 1947, 85-417.

30-14-123 through 30-14-130 reserved.

30-14-131. Restoration. The court may make such additional orders or judgments as may be necessary to restore to any person any moneys or property, real or personal, which may have been acquired by means of any practice in this part declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

History: En. Sec. 6, Ch. 275, L. 1973; R.C.M. 1947, 85-406.

30-14-132. Powers of receiver — proof of damages — jurisdiction. (1) When a receiver is appointed by the court pursuant to this part, he has the power to sue for, collect, receive, and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of any practice declared to be illegal and prohibited by this part, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

(2) Any person who has suffered damages as a result of the use or employment of any unlawful practice and submits proof to the satisfaction of the court that he has in fact been damaged may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required.

History: En. Sec. 7, Ch. 275, L. 1973; amd. Sec. 8, Ch. 265, L. 1977; R.C.M. 1947, 85-407.

30-14-133. Damages — notice to public agencies — attorney fees — prior judgment as evidence. (1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller or lessor resides or has his principal place of business or is doing business to recover actual damages or $200, whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained and may provide such equitable relief as it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment, or order of the court made under 30-14-111 shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 30-14-103.

History: En. Sec. 8, Ch. 275, L. 1973; amd. Sec. 9, Ch. 265, L. 1977; R.C.M. 1947, 85-408.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

30-14-134. Enforcement of department orders — contempt. If any person fails or refuses to file any statement or report or obey any subpoena or investigative demand issued by the department, the department may, after notice, apply to the district court and, after hearing thereon, request an order:

(1) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(2) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state; revoking or suspending the certificate of authority to do business in this state of a foreign corporation; or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(3) granting such other relief as may be required until the person files the statement or report or obeys the subpoena or investigative demand. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

History: En. Sec. 13, Ch. 275, L. 1973; R.C.M. 1947, 85-413.

30-14-135 through 30-14-140 reserved.

30-14-141. Dissolution or forfeiture of corporate franchise. Upon petition by the department, the district court may, in its discretion, order the dissolution, suspension, or forfeiture of franchise of any corporation which violates the terms of any injunction issued under 30-14-111.

History: En. Sec. 15, Ch. 275, L. 1973; R.C.M. 1947, 85-415.

30-14-142. Penalties. (1) A person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil fine of not more than $10,000 for each violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause must be continued, and in those cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil fine of not more than $1,000 for each violation.

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined not more than $5,000, imprisoned for not more than 1 year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that the conduct was a violation of 30-14-103.

History: En. Sec. 14, Ch. 275, L. 1973; R.C.M. 1947, 85-414; amd. Sec. 8, Ch. 137, L. 1979; amd. Sec. 2, Ch. 394, L. 1979; amd. Sec. 15, Ch. 342, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 342 in (1) and (2) substituted "fine" for "penalty"; in (2) increased fine amount from $500 to $1,000; in (3) increased fine amount from $2,000 to $5,000; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Part 2

Unfair Trade Practices Generally

Part Cross-References

Insurance — unfair trade practices, Title 33, ch. 18.

30-14-201. Purpose. The legislature declares that the purpose of this part is to safeguard the public against the creation or perpetuation of monopolies and foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This part shall be literally construed so that its beneficial purposes may be subserved.

History: En. Sec. 14, Ch. 80, L. 1937; Sec. 51-117, R.C.M. 1947; amd. and redes. 51-501 by Sec. 1, Ch. 518, L. 1977; R.C.M. 1947, 51-501.

30-14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil. A product or service of a public utility is not included within the term "article of commerce".

(2) "Business" includes any person, as defined in (7), domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) (a) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(b) Cost, as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is lesser, less all trade discounts except customary cash discounts plus the cost of doing business by the vendor.

(4) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes, without being limited to, the following items of expense:

(a) labor (including salaries of executives and officers);
(b) rent;
(c) interest on borrowed capital;
(d) depreciation;
(e) selling cost;
(f) maintenance of equipment;
(g) delivery costs;
(h) credit losses;
(i) all types of licenses;
(j) taxes;
(k) insurance and advertising.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when such vendor pays for merchandise within a limited or specified time.

(6) "Department" means the department of commerce provided for in 2-15-1801.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person.

History: En. 51-502 by Sec. 2, Ch. 518, L. 1977; R.C.M. 1947, 51-502; amd. Sec. 2, Ch. 274, L. 1981.

30-14-203. Persons responsible. Any person who, either as director, officer, or agent of any business or as agent of any person, assists or aids, directly or indirectly, in a violation of this part is responsible therefor equally with the person or business for whom or which he acts.

History: En. Sec. 2, Ch. 80, L. 1937; Sec. 51-102, R.C.M. 1947; amd. and redes. 51-503 by Sec. 3, Ch. 518, L. 1977; R.C.M. 1947, 51-503; amd. Sec. 135, Ch. 575, L. 1981.

Cross-References

Accountability for conduct of corporation, 45-2-312.

30-14-204. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person or business for whom or which he acts.

History: En. 51-504 by Sec. 4, Ch. 518, L. 1977; R.C.M. 1947, 51-504; amd. Sec. 136, Ch. 575, L. 1981.

Cross-References

Terms denoting state of mind, 1-1-204.

Definitions and state of mind, 45-2-101.

30-14-205. Unlawful restraint of trade. It is unlawful for a person or group of persons, directly or indirectly:

(1) to enter an agreement for the purpose of fixing the price or regulating the production of an article of commerce;

(2) for the purpose of creating or carrying out any restriction in trade, to:

(a) limit productions;

(b) increase or reduce the price of merchandise or commodities;

(c) prevent competition in the distribution or sale of merchandise or commodities;

(d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled;

(e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder;

(f) return a part of any amount added to a bid by collusive agreement among bidders to any person;

(g) create a monopoly in the manufacture, sale, or transportation of an article of commerce;

(h) enter into an agreement which binds any person not to manufacture, sell, or transport an article of commerce below a common standard or figure or which keeps such article or transportation at a fixed or graduated figure or by which the price of such article is settled so as to preclude unrestricted competition.

History: En. 51-505 by Sec. 5, Ch. 518, L. 1977; R.C.M. 1947, 51-505.

Cross-References

Unlawful practices, 30-14-103.

30-14-206. Labor excepted. The provisions of 30-14-205 do not apply to any arrangements, agreement, or combination between laborers made with the object of lessening the number of hours of labor or increasing wages.

History: En. Sec. 2, Ch. 97, L. 1909; re-en. Sec. 10902, R.C.M. 1921; re-en. Sec. 10902, R.C.M. 1935; Sec. 94-1105, R.C.M. 1947; redes. 51-402 by Sec. 29, Ch. 513, L. 1973; amd. and redes. 51-506 by Sec. 6, Ch. 518, L. 1977; R.C.M. 1947, 51-506.

30-14-207. Unfair competition in sales. (1) It is unlawful for any business, with the intent to destroy the competition of any regular established dealer of any article of commerce or to prevent the competition of any person who in good faith intends or attempts to become such dealer, to discriminate between different localities in this state by selling or furnishing such article at a lower rate in one locality than in another, after making allowance for difference, if any, in the grade, quality, quantity, and actual cost of transportation from the point of production or manufacture of the article.

(2) This section does not prohibit the meeting in good faith of a competitive rate or prevent a reasonable classification of service by public utilities for the purpose of establishing rates.

(3) The prohibition against locality discrimination includes any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section.

(4) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in a contract entered into under this section, whether or not the person so advertising, offering for sale, or selling is a party to such contract, is unfair competition, and a person damaged thereby may bring an action.

History: En. 51-507 by Sec. 7, Ch. 518, L. 1977; R.C.M. 1947, 51-507.

Cross-References

Sales below cost — evidence of unlawful intent, 16-10-301.

Sale defined, 30-11-101.

Unlawful practices, 30-14-103.

30-14-208. Unfair competition in purchasing. (1) Any business which, for the purpose of creating a monopoly or destroying the business of a regularly established dealer or preventing the competition of any person who in good faith intends or attempts to become such dealer, discriminates between different persons or localities of this state by purchasing any article of commerce at a higher rate or price in one locality than in another, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution and for the difference in the grade and quality of such article, is guilty of unfair discrimination, which is prohibited and unlawful.

(2) Proof that any person has paid a higher rate or price for any article of commerce in one locality than in another, after making due allowance for the difference in the actual cost of transportation and for the difference in the grade and quality of such article, shall be prima facie evidence of a violation of this section.

(3) The payment of a higher rate or price in one locality than in another, after making such allowance provided above, is not unfair discrimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such locality. The burden of proof of such fact is upon the person charged with unfair discrimination.

History: En. 51-508 by Sec. 8, Ch. 518, L. 1977; R.C.M. 1947, 51-508.

Cross-References

Montana product preference provisions, 18-1-112.

Montana Small Business Purchasing Act, Title 18, ch. 5, part 3.

30-14-209. Sales at less than cost forbidden. It is unlawful for a vendor to sell, offer for sale, or advertise for sale any article of commerce at less than the cost thereof to the vendor or to give, offer to give, or advertise the intent to give away any article of commerce for the purpose of injuring competitors and destroying competition.

History: En. 51-509 by Sec. 9, Ch. 518, L. 1977; R.C.M. 1947, 51-509.

Cross-References

Unlawful practices, 30-14-103.

30-14-210. Cost survey as evidence of cost. Whenever a particular trade or industry, of which the person complained against is a member, has an established cost survey for the locality in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person complained against.

History: En. 51-510 by Sec. 10, Ch. 518, L. 1977; R.C.M. 1947, 51-510.

30-14-211. Establishing cost survey. (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, establish the cost survey provided for in 30-14-210. When petition for a cost survey has been so presented to the department, the department shall, as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established and, if so, upon the matter of establishing such cost survey. The hearing shall be held at the office of the department and upon that notice which the department may require by rule. However, notice of the hearing shall be published for at least 2 successive weeks in the daily newspaper or newspapers as the department may designate as most commonly circulated in the counties to be affected by the cost survey. The notice shall further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by it as provided in this section. If the department determines that a cost survey should be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected, determine and delimit the particular area within which the trade or business will be affected, and find and determine the probable cost of doing business or overhead expense, stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business within the area.

(3) If the department determines that the probable cost of doing business or overhead expense stated in percentage of invoice or replacement cost which would

probably be incurred by the most efficient person in the trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined shall be presumed to be the actual cost of doing business and overhead expense of any person in the trade or business and within the area affected by the cost survey.

History: En. Sec. 12A, Ch. 80, L. 1937, added by Sec. 2, Ch. 50, L. 1939; amd. Sec. 1, Ch. 21, L. 1945; amd. Sec. 2, Ch. 129, L. 1949; amd. Sec. 122, Ch. 431, L. 1975; Sec. 51-114, R.C.M. 1947; amd. and redes. 51-511 by Sec. 11, Ch. 518, L. 1977; R.C.M. 1947, 51-511.

Cross-References

Department authority, 30-14-114.

30-14-212. Forced sales not basis of cost price. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt, closeout, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of sale of the article or product replaced through the ordinary channels of trade, unless:

(1) the article or product is kept separate from goods purchased in the ordinary channels of trade;

(2) the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, or closeout sale or by means other than through the ordinary channels of trade and such advertising states the conditions under which the goods were purchased and the quantity of merchandise to be sold or offered for sale.

History: En. Sec. 4, Ch. 80, L. 1937; Sec. 51-104, R.C.M. 1947; amd. and redes. 51-512 by Sec. 12, Ch. 518, L. 1977; R.C.M. 1947, 51-512.

30-14-213. Sales excepted. Sections 30-14-209, 30-14-210, and 30-14-212 do not apply to any sale made:

(1) in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any article of commerce;

(2) of seasonal goods;

(3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(4) when the goods are damaged or deteriorated in quality and notice is given to the public thereof;

(5) by an officer acting under the orders of any court;

(6) in a good faith endeavor to meet the legal prices of a competitor selling the same article of commerce in the same locality or trade area; or

(7) to the state of Montana or any of its institutions.

History: En. Sec. 6, Ch. 80, L. 1937; amd. Sec. 1, Ch. 100, L. 1941; Sec. 51-107, R.C.M. 1947; amd. and redes. 51-513 by Sec. 13, Ch. 518, L. 1977; R.C.M. 1947, 51-513.

30-14-214. Fair price for agricultural products. (1) The following method shall be used in determining fair prices for agricultural products sold on local markets in a trade area, district, or city in which the major portion of an agricultural commodity or product is produced within or adjacent to the trade area, city, or district:

(a) When 75% of the producers of an agricultural product or commodity marketing those products or commodities within a trade area, district, or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be the fair price for that product or commodity under the terms of this part.

(b) Those producers through their agents shall file with the department the fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of the agricultural products or commodities.

An organization representing consumers may not be denied representation at the hearing.

(2) After the establishment of a schedule of fair prices for the agricultural products or commodities, it is a violation of this part for a producer, jobber, wholesaler, or retailer to sell or buy an agricultural commodity or product below the price established by the department. Such action is punishable under the terms provided in this part.

History: En. Sec. 5-A, Ch. 80, L. 1937; amd. Sec. 120, Ch. 431, L. 1975; Sec. 51-106, R.C.M. 1947; amd. and redes. 51-514 by Sec. 14, Ch. 518, L. 1977; R.C.M. 1947, 51-514.

30-14-215. Rebates forbidden. (1) The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and when such payment or allowance tends to destroy competition, is an unfair trade practice, and any person resorting to such trade practice is guilty of a misdemeanor and on conviction is subject to the penalties set out in 30-14-224.

(2) However, nothing in this section prevents a cooperative association, organized and operating on a true cooperative basis, from returning to the members, producers, or consumers the whole or any part of the net earnings or surplus resulting from its trading operations in proportion to their purchases or sales from, to, or through the association.

History: En. Sec. 7, Ch. 80, L. 1937; Sec. 51-108, R.C.M. 1947; amd. and redes. 51-515 by Sec. 15, Ch. 518, L. 1977; R.C.M. 1947, 51-515.

Cross-References

Unlawful practices, 30-14-103.

30-14-216. Pooling of grain prohibited. (1) It is unlawful for any person engaged in the buying, selling, or handling of grain in any public local warehouse in this state or for the local agent in charge of such warehouse or any other agent of the person operating the same to enter into a contract, agreement, or understanding with any other person owning or operating any other public local warehouse at any railway station or with its agent whereby:

(a) the amount of grain to be received or handled by the warehouses at such station is to be equalized or pooled between the warehouses;

(b) the profits or earnings derived from the warehouses are to be divided, pooled, or apportioned in any manner; or

(c) the price to be paid for any kind of grain at such station is to be fixed or in any manner affected.

(2) Each day of the continuance of any such agreement, contract, or understanding constitutes a separate offense.

History: En. Sec. 1, Ch. 69, L. 1915; re-en. Sec. 10912, R.C.M. 1921; Sec. 94-1115, R.C.M. 1947; redes. 51-411 by Sec. 29, Ch. 513, L. 1973; re-en. Sec. 10912, R.C.M. 1935; amd. and redes. 51-516 by Sec. 16, Ch. 518, L. 1977; R.C.M. 1947, 51-516.

Cross-References

Grain and commodity storage and transportation, Title 69, ch. 14, part 9.

30-14-217. Destruction of food. It is unlawful for any person to destroy or to withhold from sale for a period of time which makes it necessary to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other product or article which is customary or proper food for human beings and is in fit sanitary condition to be used as such.

History: En. Sec. 1, Ch. 16, L. 1919; re-en. Sec. 10914, R.C.M. 1921; Sec. 94-1117, R.C.M. 1947; redes. 51-413 by Sec. 29, Ch. 513, L. 1973; re-en. Sec. 10914 R.C.M.; amd. and redes. 51-517, by Sec. 17, Ch. 518, L. 1977; R.C.M. 1947, 51-517.

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, part 2.

30-14-218. Alteration of invoices prohibited. It is unlawful for a person to change, alter, substitute, or falsify an invoice if the practice tends to injure a competitor, destroy competition, or mislead a court or the department. Such practice is unfair trade practice and a person resorting to that trade practice is guilty of a misdemeanor and is subject to the penalties provided in 30-14-224.

History: En. Sec. 4, Ch. 50, L. 1939; amd. Sec. 124, Ch. 431, L. 1975; Sec. 51-116, R.C.M. 1947; amd. and redes. 51-518 by Sec. 18, Ch. 518, L. 1977; R.C.M. 1947, 51-518.

Cross-References

Alteration — negotiable instruments, 30-3-407.

Altered warehouse receipts, 30-7-208.

Altered bills of lading, 30-7-306.

Unlawful practices, 30-14-103.

30-14-219. Recovery on illegal contracts forbidden. A contract, express or implied, made by a person in violation of any of the provisions of 30-14-205 through 30-14-218 is an illegal contract and no recovery thereon may be had.

History: En. Sec. 9, Ch. 80, L. 1937; Sec. 51-110, R.C.M. 1947; amd. and redes. 51-522 by Sec. 22, Ch. 518, L. 1977; R.C.M. 1947, 51-522.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

30-14-220. Enforcement by department. (1) The department shall prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the director of the department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department shall:

(a) make its own investigation;

(b) within 60 days of the finding of probable cause make a written report of its investigation; and

(c) mail a copy of its findings to the person initially giving notice of a violation.

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part and if it appears to the department that a proceeding by it would be in the interest of the public, it shall issue and serve upon the person a complaint stating the charges and containing a notice of a hearing at a place and upon a day not less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

(c) The person so complained against may appear at the place and time so fixed and show cause why an order should not be entered by the department requiring such person to stop the violation of the law charged in the complaint.

(d) Any person may make application and upon good cause shown may be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding shall be reduced to writing and filed with the department.

(f) If upon the hearing the department believes that the act or conduct in question is prohibited by this part, it shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring such person to stop the acts or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, a report or an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the department.

(6) Proceedings under this section shall be given precedence over other civil cases pending in the district court and shall be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the state a penalty of not more than $1,000 for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part.

History: En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967; amd. Sec. 121, Ch. 431, L. 1975; Sec. 51-113, R.C.M. 1947; amd. and redes. 51-519 by Sec. 19, Ch. 518, L. 1977; R.C.M. 1947, 51-519.

Cross-References

Department to restrain unlawful acts, 30-14-111.

Department authority, 30-14-114.

Enforcement of Department orders — contempt, 30-14-134.

30-14-221. Investigations. (1) The department, for the purpose of conducting hearings and investigations which in the opinion of the department are necessary and proper for the exercise of the powers vested in it by this part, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy such evidence. The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of contumacy or refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal prosecution. Nothing in this section prohibits the department from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if

the department determines, in its sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

History: En. Sec. 3, Ch. 50, L. 1939; amd. Sec. 123, Ch. 431, L. 1975; Sec. 51-115, R.C.M. 1947; amd. and redes. 51-520 by Sec. 20, Ch. 518, L. 1977; R.C.M. 1947, 51-520; amd. Sec. 2, Ch. 577, L. 1983; amd. Sec. 2, Ch. 101, L. 1985.

Cross-References

Investigative demand, 30-14-113.

Perjury, 45-7-201.

30-14-222. Injunctions — damages — production of evidence. (1) Any person, if injured thereby, or the attorney general may maintain an action to enjoin a continuance of an act in violation of 30-14-205 through 30-14-218 and for the recovery of damages. If in such action the court finds that the defendant is violating or has violated any of the provisions of 30-14-205 through 30-14-218, it shall enjoin the defendant from a continuance thereof. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to such injunctive relief, the plaintiff is entitled to recover from the defendant three times the amount of actual damages sustained.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition the books and records of any such defendant may be brought into court and introduced into evidence by reference. No information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under 30-14-205 through 30-14-218 and 30-14-224.

History: En. Sec. 10, Ch. 80, L. 1937; Sec. 51-111, R.C.M. 1947; amd. and redes. 51-521 by Sec. 21, Ch. 518, L. 1977; R.C.M. 1947, 51-521.

Cross-References

Authentication and identification, Art. IX, M.R.Ev. (see Title 26, ch. 10).

Contents of writings, recordings, and photographs, Art. X, M.R.Ev. (see Title 26, ch. 10).

30-14-223. Department to institute suit. Upon the third violation of any of the provisions of 30-14-205 through 30-14-218 by any business, the department shall institute proper suits or quo warranto proceedings in a court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges, and powers exercised by such business and to permanently enjoin it from transacting business in this state. If in such action the court finds that the business is violating or has violated any of the provisions of 30-14-205 through 30-14-218, it shall enjoin the business from doing business in this state permanently or for such time as the court orders or shall annul the charter or revoke the franchise of such business.

History: En. Sec. 8, Ch. 80, L. 1937; Sec. 51-109, R.C.M. 1947; amd. and redes. 51-523 by Sec. 23, Ch. 518, L. 1977; R.C.M. 1947, 51-523; amd. Sec. 137, Ch. 575, L. 1981.

30-14-224. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the provisions of 30-14-206 through 30-14-218 is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than $100 or more than $1,000 or imprisoned for a term not to exceed 6 months, or both.

(2) A violation of 30-14-205 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding $25,000, or both.

(3) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued

to the person so convicted. In such case no new license may be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with him in such business for a period of 1 year.

History: En. 51-524 by Sec. 24, Ch. 518, L. 1977; R.C.M. 1947, 51-524; amd. Sec. 9, Ch. 137, L. 1979.

30-14-225. Prohibited practices — advertising allowed — violations. (1) A person engaged in automobile repair or the sale, repair, or replacement of automobile glass or in the business of automobile repair may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration; or

(b) pay a sum or incentive to an individual or entity for directing automobile repair services or glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in automobile repair services or the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage, handle, or arrange automobile glass replacement or glass repair work or automobile repair services for which the glass broker or the automobile repair business retains a percentage of the claim.

(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:

(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or

(b) mention or provide the name of a particular automobile repair business or location.

(5) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12.

History: En. Sec. 4, Ch. 554, L. 1993; amd. Sec. 1, Ch. 207, L. 1997; amd. Sec. 1, Ch. 174, L. 1999; amd. Sec. 1, Ch. 526, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 174 in (1) in introductory clause after "glass" inserted "or in the business of automobile repair"; in (1)(a) at end inserted "including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration"; and inserted (5) establishing violations. Amendment effective October 1, 1999.

Chapter 526 throughout (1), (2), and (3) inserted references to automobile repair; and inserted (4) prohibiting an insurer from directing or encouraging the use of a particular automobile repair business. Amendment effective October 1, 1999.

Cross-References

Automobile glass repair shops — provisions pertaining to insurance, 33-18-221 through 33-18-223.

Windshield tinting — restrictions, 61-9-405.

Part 3

Motion Picture Fair Trade Practices Act

Part Cross-References

Theater licenses, 7-21-2205.

Certain motion picture theater employees not liable for prosecution, 45-8-203.

Theaters — sanitary inspections, 50-1-203.

30-14-301. Short title. This part shall be known and may be cited as the "Motion Picture Fair Trade Practices Act".

History: En. Sec. 1, Ch. 214, L. 1981.

30-14-302. Purpose. The purposes of this part are to establish fair and open procedures for the licensing of motion pictures within the state; to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the state; to promote fair and effective competition in that business; and to benefit the moviegoing public by holding down admission prices to motion picture theaters, expanding the choice of motion pictures available to the public, and preventing exposure of the public to objectionable or unsuitable motion pictures by ensuring that exhibitors have the opportunity to view a picture before committing themselves to exhibit it.

History: En. Sec. 2, Ch. 214, L. 1981.

Cross-References

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Chain distributor schemes, 45-6-319.

30-14-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Blind bidding" means bidding, negotiating, offering terms, making an invitation to bid, or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the motion picture that is the subject of the agreement.

(2) "Distributor" means any person engaged in the business of renting, selling, or licensing motion pictures to exhibitors.

(3) "Exhibitor" means any person engaged in the business of operating a theater in this state.

(4) "License agreement" means any contract between a distributor and an exhibitor for the exhibition of a motion picture by the exhibitor in this state.

(5) "Market area" means either a city in Montana or a city in any of the 11 western states that prohibits blind bidding.

(6) "Theater" means any establishment in which motion pictures are exhibited regularly to the public for a charge.

(7) "Trade screening" means the showing of a motion picture by a distributor in the market area. Such showing shall be open to any exhibitor interested in exhibiting the motion picture, and such exhibitor or his buying agency will be notified of such trade screening.

History: En. Sec. 3, Ch. 214, L. 1981.

30-14-304. Blind bidding prohibited. No distributor or exhibitor may engage in blind bidding.

History: En. Sec. 4, Ch. 214, L. 1981.

30-14-305. License agreements — unlawful provisions. (1) It is unlawful for any license agreement that provides for a fee or other payment to the distributor based in whole or in part on the attendance or the box office receipts at a theater within the state to contain or be conditioned upon a guarantee of a minimum payment to the distributor.

(2) Any provision, agreement, or understanding entered into after October 1, 1981, that provides for such a guarantee is void, and any purported waiver of the prohibition in subsection (1) is void and unenforceable.

History: En. Sec. 5, Ch. 214, L. 1981.

Cross-References

When contract wholly void, 28-2-603.
When contract partially void, 28-2-604.
Contracts — what is unlawful, 28-2-701.
Contracts — what conditions void, 28-2-707.

30-14-306. Bid requirements. If bids are solicited from exhibitors for the purpose of entering into a license agreement, the invitation to bid shall include the date, time, and location of the trade screening of the motion picture that is the subject of the invitation to bid.

History: En. Sec. 6, Ch. 214, L. 1981.

30-14-307. Void acts. Any provision of an invitation to bid or a license agreement entered into after October 1, 1981, that waives any of the prohibitions of or fails to comply with this part is void and unenforceable.

History: En. Sec. 7, Ch. 214, L. 1981.

Cross-References

Contracts — what conditions void, 28-2-707.

30-14-308. Violation a misdemeanor. It is unlawful for any person to willfully violate any provision of this part. Any such violation constitutes a misdemeanor, and the violator shall be punished as provided in 46-18-212.

History: En. Sec. 8, Ch. 214, L. 1981.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

Part 4

Uniform Trade Secrets Act

Part Cross-References

Hazardous chemical information — trade secret confidentiality, 50-78-205.

30-14-401. Short title. This part may be cited as the "Uniform Trade Secrets Act".

History: En. Sec. 1, Ch. 104, L. 1985.

30-14-402. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

History: **En. Sec. 2, Ch. 104, L. 1985.**

30-14-403. Injunctive relief — royalty. (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include but are not limited to a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

History: **En. Sec. 3, Ch. 104, L. 1985; amd. Sec. 1, Ch. 269, L. 1995.**

Cross-References

Injunctions, Title 27, ch. 19.

30-14-404. Damages. (1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized use of a trade secret.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages.

History: **En. Sec. 4, Ch. 104, L. 1985; amd. Sec. 2, Ch. 269, L. 1995.**

Cross-References

When exemplary damages allowed, 27-1-221.

Measure of damages, Title 27, ch. 1, part 3.

30-14-405. Costs and attorney fees. If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable costs and attorney fees to the prevailing party.

History: **En. Sec. 5, Ch. 104, L. 1985.**

Cross-References

Costs and attorney fees, Title 25, ch. 10.

30-14-406. Preservation of secret. In an action under this part, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

History: En. Sec. 6, Ch. 104, L. 1985.

30-14-407. Statute of limitations. An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

History: En. Sec. 7, Ch. 104, L. 1985.

Cross-References

Statutes of limitations — general provisions, Title 27, ch. 2, part 1.

30-14-408. Effect on other law. (1) Except as provided in subsection (2), this part displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(2) This part does not affect:

(a) contractual remedies, whether or not based upon misappropriation of a trade secret;

(b) other civil remedies that are not based upon misappropriation of a trade secret; or

(c) criminal remedies, whether or not based upon misappropriation of a trade secret.

History: En. Sec. 8, Ch. 104, L. 1985; amd. Sec. 3, Ch. 269, L. 1995.

Cross-References

Theft, 45-6-301.

30-14-409. Uniformity of application and construction. This part shall be applied and construed to effectuate its general purpose to make the law uniform with respect to the subject of this act among states enacting it.

History: En. Sec. 9, Ch. 104, L. 1985.

Part 5

Personal Solicitation Sales

Part Cross-References

Unlawful automated telephone solicitation — exceptions — penalties, 45-8-216.

30-14-501. Purpose. The purpose of this part is to afford consumers subjected to high pressure personal solicitation sales tactics a cooling-off period.

History: En. Sec. 1, Ch. 426, L. 1973; amd. Sec. 1, Ch. 191, L. 1977; R.C.M. 1947, 85-501.

30-14-502. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller who regularly engages in transactions of the same kind to sell goods or services which are primarily for personal, family, or household purposes, when either the seller or a person acting for him contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer personally knows the identity of the seller, the name of the business, firm, or organization he represents, and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor engaged in both the delivery and the sale of the newspaper; or

(d) an attempted sale of an insurance policy.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for him, provided the buyer is required to give consideration in excess of $25 in cash or credit therefor.

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including assignee of a seller.

History: En. 85-502.1 by Sec. 2, Ch. 191, L. 1977; R.C.M. 1947, 85-502.1; amd. Sec. 138, Ch. 575, L. 1981.

30-14-503. Disclosure obligation. Before any personal solicitation each seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization he represents, the identity or kinds of goods or services he wishes to demonstrate or sell, and that he wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller shall also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization he represents. The disclosures required by this section shall be made before asking any questions or making any statements except an initial greeting. Nonprofit organizations are exempt from the requirements of this section.

History: En. 85-502.2 by Sec. 3, Ch. 191, L. 1977; R.C.M. 1947, 85-502.2.

Cross-References

Sales, Title 30, ch. 11, parts 1 and 2.

30-14-504. Buyer's right to cancel — time allowed — notice — return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such sale, provided that in the case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to his signing of an agreement or offer to purchase relating to such sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, is considered given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

(5) A personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer.

History: En. Sec. 3, Ch. 426, L. 1973; amd. Sec. 4, Ch. 191, L. 1977; R.C.M. 1947, 85-503.

Cross-References

Seller's responsibilities, Title 30, ch. 11, part 2.

30-14-505 . Notice of right to cancel. (1) The seller shall furnish the buyer a notice which contains the statement set forth in subsection (1)(a) or a statement as prescribed by federal trade commission rule governing door-to-door sales and printed in capital and lowercase letters of not less than 10-point boldfaced type with the seller's name and business address and the statement set forth in subsection (1)(b):

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within 3 days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within 3 days after you sign the contract.

(date)

(b) CONTRACT CANCELED

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the personal solicitation sale by notifying the seller in any manner and by any means of his intention to cancel; provided, however, that failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by 30-14-504 shall begin to run from the time the seller complies with this section.

History: En. Sec. 4, Ch. 426, L. 1973; amd. Sec. 5, Ch. 191, L. 1977; R.C.M. 1947, 85-504.

Cross-References

Seller's responsibilities, Title 30, ch. 11, part 2.

30-14-506. Repayment to buyer — retention of goods by buyer. (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor, the court shall also award him $100 plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

History: En. Sec. 5, Ch. 426, L. 1973; amd. Sec. 6, Ch. 191, L. 1977; R.C.M. 1947, 85-505; amd. Sec. 10, Ch. 137, L. 1979.

Cross-References

Sales and exchanges, Title 30, ch. 11, part 1.

Seller's responsibilities, Title 30, ch. 11, part 2.

30-14-507. Redelivery of goods. (1) Except as provided by 30-14-506(4), within a reasonable time after a personal solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days shall be presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk, and such goods must be returned in substantially the same condition as received.

History: En. Sec. 6, Ch. 426, L. 1973; amd. Sec. 7, Ch. 191, L. 1977; R.C.M. 1947, 85-506.

30-14-508. Violation. Except where inconsistent with the provisions of this part, a violation of this part is a violation of part 1.

History: En. 85-507 by Sec. 8, Ch. 191, L. 1977; R.C.M. 1947, 85-507.

Part 6

Sale of Imitation Indian Articles

30-14-601. Definitions. As used in this part, the following definitions apply:

(1) "Imitation Indian arts or crafts articles" means those made by machine or made wholly out of synthetic or artificial materials or articles which are not made by Indian labor or workmanship.

(2) "Indian" means a person who is enrolled or who is a lineal descendant of one enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

History: En. Sec. 1, Ch. 42, L. 1967; R.C.M. 1947, 85-301.

30-14-602. Articles to be designated and segregated. A person may not distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation. All imitation articles must be physically segregated from authentic Indian articles for display purposes. All imitation Indian arts or crafts articles must be displayed near a sign prominently and legibly designating the articles as imitation.

History: En. Sec. 2, Ch. 42, L. 1967; amd. Sec. 1, Ch. 52, L. 1973; R.C.M. 1947, 85-302; amd. Sec. 1, Ch. 182, L. 1991.

Cross-References

Warranty defined, 30-11-209.

30-14-603. Designation of authenticity. Only those articles bearing a registered trademark or label of authentic Indian labor or workmanship may be deemed authentic Indian arts or crafts articles.

History: En. Sec. 3, Ch. 42, L. 1967; R.C.M. 1947, 85-303.

Cross-References

Warranty defined, 30-11-209.

30-14-604. Violation as misdemeanor. Any person who violates this part is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 42, L. 1967; R.C.M. 1947, 85-304.

Cross-References

When no penalty specified, 46-18-212.

Part 7

Fraudulent Financing of Mining and Oil Companies

Part Cross-References

Fraud, 28-2-404 through 28-2-406.

Minerals, Oil, and Gas, Title 82.

30-14-701. Mining and oil companies — fraudulent handling of finances. For the purposes of 30-14-701 through 30-14-704, the following acts and offenses relative to the handling of the finances of mine and oil operations within the state of Montana shall be deemed fraudulent:

(1) failure to expend at least 75% of all money raised from the public from the sale of stock or securities of any other kind or character in the actual operation and development of the oil and mining property or in the construction of treating plants or from bona fide payments on the purchase price of state property;

(2) failure to apply net earnings from said operations, after deducting only reasonable and legitimate expenses, to either a reserve fund, distribution of dividends, liquidation of bona fide indebtedness, or reasonable development of said properties;

(3) the operation of holding companies in such a manner as to deprive the stockholders of the parent company of an equitable interest in the earnings of the parent company.

History: En. Sec. 1, Ch. 199, L. 1935; re-en. Sec. 11458.1, R.C.M. 1935; Sec. 94-2322, R.C.M. 1947; redes. 15-22-141 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-141.

30-14-702. Application. The provisions of 30-14-701 through 30-14-704 shall apply to any person, corporation, or other form of association now operating or which shall hereafter operate a mining or oil enterprise, the finances of which are derived in whole or in part from subscription and security sales to the public, and operating within the state of Montana. The provisions of 30-14-701 through 30-14-704 do not apply to any person, firm, corporation, or cooperative association holding a permit in good standing from the state securities commissioner or to securities listed on the New York stock exchange, Boston stock exchange, the board of trade of the city of Chicago, the Chicago stock exchange, or the New York curb exchange.

History: En. Sec. 2, Ch. 199, L. 1935; re-en. Sec. 11458.2, R.C.M. 1935; Sec. 94-2323, R.C.M. 1947; redes. 15-22-142 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-142; amd. Sec. 1, Ch. 84, L. 1983.

30-14-703. Investigation of complaints. Any stockholder or creditor of a mining or oil company as heretofore provided in 30-14-701 through 30-14-704 who has bona fide reason to believe that the provisions of 30-14-701 through 30-14-704 have been violated may complain relative thereto to the attorney general of the state, the county attorney of the county in which the property is located, or the state securities commissioner, and it shall be incumbent upon the officers mentioned to make a complete investigation of the records and affairs of said corporation or corporations. In the event the facts disclose the violation of the provisions of 30-14-701 through 30-14-704, it shall be the duty of the officer to prefer charges against the officers and directors of the corporation or corporations involved.

History: En. Sec. 3, Ch. 199, L. 1935; re-en. Sec. 11458.3, R.C.M. 1935; Sec. 94-2324, R.C.M. 1947; redes. 15-22-143 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-143; amd. Sec. 8, Ch. 351, L. 1979.

30-14-704. Penalty. Any person or the officers or directors of any corporation, cooperative association, or any other association of any kind or character found guilty of the violation of the provisions of 30-14-701 through 30-14-704 shall be subject to imprisonment in the state prison for a term of not less than 90 days or more than 3 years or by a fine of not less than $100 or more than $1,000 or both such fine and imprisonment.

History: En. Sec. 4, Ch. 199, L. 1935; re-en. Sec. 11458.4, R.C.M. 1935; Sec. 94-2325, R.C.M. 1947; redes. 15-22-144 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-144.

Part 8

Retail Motor Fuel Marketing (Repealed. Sec. 1, I.M. No. 134)

30-14-801. Repealed. Sec. 1, I.M. No. 134, Nov. 3, 1998.
History: En. Sec. 1, Ch. 499, L. 1991.

30-14-802. Repealed. Sec. 1, I.M. No. 134, Nov. 3, 1998.
History: En. Sec. 2, Ch. 499, L. 1991.

30-14-803. Repealed. Sec. 1, I.M. No. 134, Nov. 3, 1998.
History: En. Sec. 3, Ch. 499, L. 1991; amd. Sec. 6, Ch. 358, L. 1995.

30-14-804. Repealed. Sec. 1, I.M. No. 134, Nov. 3, 1998.
History: En. Sec. 4, Ch. 499, L. 1991; amd. Sec. 1, Ch. 519, L. 1993.

30-14-805. Repealed. Sec. 1, I.M. No. 134, Nov. 3, 1998.
History: En. Sec. 5, Ch. 499, L. 1991.

30-14-806. Repealed. Sec. 1, I.M. No. 134, Nov. 3, 1998.
History: En. Sec. 6, Ch. 499, L. 1991.

Part 9

Price Discrimination

30-14-901. Discrimination in price. (1) It is unlawful for a business to discriminate, directly or indirectly, in the price charged to different purchasers of commodities of like grade and quality if the effect of the discrimination upon other businesses or customers is to substantially lessen competition, to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any business that grants or knowingly receives the benefit of the discrimination.

(2) This section does not prohibit:

(a) price differentials that make due allowance for the costs of manufacture, sale, or delivery resulting from the differing methods or quantities in which the commodities are sold or delivered to the purchasers;

(b) businesses engaged in selling commodities from selecting their own customers in bona fide transactions and not in restraint of trade; or

(c) price changes from time to time made in response to changing conditions affecting the market for, or the marketability of, the commodities, including but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasoned goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(3) It is unlawful for a business to discriminate in favor of one purchaser against another purchaser of a processed or unprocessed commodity bought for resale by contracting to furnish, by furnishing, or by contributing to the furnishing of any service or facility connected with the processing, handling, sale, or offering for sale of the commodity purchased upon terms not accorded to all purchasers on proportionally equal terms.

(4) It is unlawful for a business to knowingly induce or receive a discrimination in price that is prohibited by this section.

(5) This section does not apply to industry members regulated by Title 16, chapters 1 through 6.

History: **En. Sec. 1, Ch. 486, L. 1991.**

30-14-902. Return of net earnings or surplus of cooperative association — exemption of nonprofit institution from price discrimination provision. (1) Section 30-14-901 may not be construed to prevent a cooperative association from returning to its members, producers, or consumers, in proportion to their purchases or sales from, to, or through the association, all or any part of the net earnings or surplus resulting from its trading operations.

(2) Section 30-14-901 does not apply to the purchase of supplies for its own use by a school, college, university, public library, church, hospital, or charitable institution not operated for profit.

History: **En. Sec. 2, Ch. 486, L. 1991.**

30-14-903. Federal interpretation. It is the intent of the legislature that in construing 30-14-901 and 30-14-902, due consideration and weight be given to the interpretations of the federal trade commission and the federal courts relating to the provisions of the federal Robinson-Patman Antidiscrimination Act regarding discrimination in price that are codified in 15 U.S.C. 13(b) and (c).

History: **En. Sec. 3, Ch. 486, L. 1991.**

30-14-904. Burden of rebutting prima facie case of discrimination. (1) In a proceeding for a violation of 30-14-901, if proof is made that there has been discrimination in price, the burden of rebutting the prima facie case by showing justification is upon the person charged with a violation of 30-14-901.

(2) A seller may rebut the prima facie case by showing that a lower price to a purchaser was made in good faith to meet an equally low price of a competitor.

History: **En. Sec. 4, Ch. 486, L. 1991.**

30-14-905. Recovery on illegal contracts forbidden. A contract, express or implied, made by a person in violation of the provisions of 30-14-901 is an illegal contract, and no recovery may be had on the contract.

History: **En. Sec. 5, Ch. 486, L. 1991.**

30-14-906. Injunctions — damages — production of evidence. (1) A person who is injured by a violation of 30-14-901 may maintain an action to enjoin a continuance of an act in violation of 30-14-901 and to recover damages. A court, upon finding that the defendant is violating or has violated the provisions of 30-14-901, shall enjoin the defendant from continuing the violation. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to injunctive relief, the plaintiff may recover from the defendant three times the amount of actual damages sustained plus attorney fees and costs of suit.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of a defendant may be brought into court and introduced into evidence by reference. Information so obtained may not be used against the defendant as a basis for a misdemeanor prosecution for a violation of 30-14-901.

History: **En. Sec. 6, Ch. 486, L. 1991.**

Part 10

Home Inspection Trade Practices Act

Part Compiler's Comments

Effective Date: This part is effective October 1, 1999.

30-14-1001 . Short title. This part may be cited as the "Home Inspection Trade Practices Act".

History: En. Sec. 1, Ch. 276, L. 1999.

30-14-1002. Definitions. As used in this part, the following definitions apply:

(1) "Home inspection" means a physical examination of a residential dwelling to identify major defects in various attributes of or attachments to the dwelling, including mechanical, electrical, and plumbing systems in addition to structural and other essential components. Home inspections are performed for compensation and employ visual observation and the testing of user controls but not mathematical or specialized engineering sciences.

(2) "Home inspection report" is a written document prepared by a home inspector for a client and issued to the client in exchange for compensation after a home inspection has been completed. The report must clearly identify and describe:

(a) the inspected systems, structures, and other relevant components of the dwelling;

(b) any major visible defects in the inspected systems, structures, and other relevant components of the dwelling; and

(c) any recommendations for further evaluation of the property by other appropriate persons.

(3) "Home inspector" is a person who performs a home inspection for compensation.

History: En. Sec. 2, Ch. 276, L. 1999.

30-14-1003. Exclusions. The provisions of this part do not apply to a person:

(1) inspecting a residential dwelling on behalf of a bank, a savings and loan association, or a credit union, unless otherwise required by federal law or regulation;

(2) employed by the state or a local government to enforce building codes;

(3) licensed in Montana and acting within the scope of the person's occupation or profession as:

(a) an architect;

(b) a professional engineer;

(c) an electrician;

(d) a master plumber;

(e) a real estate broker, broker-salesperson, or salesperson;

(f) a real estate appraiser or a certified general or residential real estate appraiser;

(g) an insurance adjuster;

(h) a pesticide applicator; or

(i) a licensed property manager.

History: En. Sec. 3, Ch. 276, L. 1999.

30-14-1004. Requirement — prohibitions. (1) A home inspector shall issue a home inspection report to a client after completing a home inspection unless the client agrees in writing to release the home inspector from this obligation.

(2) A home inspector may not:

(a) disclose information concerning the results of a home inspection without the written approval of the home inspector's client or the client's representative;

(b) accept compensation from more than one party with a financial interest in the residential dwelling without written approval from all parties with a financial interest in the residential dwelling;

(c) accept a commission or allowance, directly or indirectly, from another person or business entity associated with the client in connection with work for which the home inspector is responsible to the client;

(d) refuse or otherwise fail to disclose promptly to a client information about any business interest or relationship of the home inspector that may affect the client in connection with a home inspection.

History: En. Sec. 4, Ch. 276, L. 1999.

30-14-1005. Unfair trade practice. A person who provides home inspection services or purports to be a home inspector who does not comply with the provisions of this part is engaging in an unfair trade practice and is subject to the provisions of Title 30, chapter 14, part 1.

History: En. Sec. 5, Ch. 276, L. 1999.

Part 11

Plain Language in Contracts

Part Cross-References

Contracts, Title 28, ch. 2.

Interpretation of contracts, Title 28, ch. 3.

Retail installment sales, Title 31, ch. 1, part 2.

Property and Casualty Insurance Policy Language Simplification Act, 33-15-333 through 33-15-340.

Lender to require borrower's acknowledgment when encumbered real property not exempt from execution as homestead, 70-32-221.

30-14-1101. Short title. This part may be cited as the "Plain Language in Contracts Act".

History: En. Sec. 1, Ch. 615, L. 1985.

30-14-1102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agreement" means any writing that is substantially prepared in advance of a consumer transaction and which a seller, lessor, or lender furnishes to a consumer for the consumer to sign in connection with that transaction.

(2) "Consumer" means an individual who borrows money or leases or obtains property or services under a written agreement.

(3) "Consumer contract" means an agreement for the sale, lease, or loan of money, property, or services primarily for personal, family, or household purposes.

(4) "Seller, lessor, or lender" means a person who regularly sells, lets, or lends in connection with consumer contracts.

History: En. Sec. 2, Ch. 615, L. 1985.

30-14-1103. Requirements for contracts. (1) A consumer contract must be written in plain language.

(2) A consumer contract is written in plain language if:

(a) it is written in a clear and coherent manner using words with common and everyday meanings;

(b) it is appropriately divided and captioned by its various sections;

(c) it uses type of readable size;

(d) it uses ink that contrasts with the paper.

History: En. Sec. 3, Ch. 615, L. 1985.

30-14-1104. Scope. (1) Except as provided in subsection (2), 30-14-1103 applies to any agreement in connection with a consumer contract entered into in this state between a consumer who is a resident of this state at the time of the transaction and a seller, lessor, or lender.

(2) Section 30-14-1103 does not apply to:

(a) consumer contracts in which the value of the money, property, or services bought, leased, or borrowed exceeds $50,000 at the time of the contract;

(b) consumer contracts in which securities or commodities accounts are bought, leased, or borrowed;

(c) an insurance policy or contract that is subject to the provisions of Title 33;

(d) a seller, lessor, or lender, if it is a government agency or instrumentality;

(e) the provision of public utility service under tariffs approved by the public service commission; or

(f) a transfer of real estate.

(3) The use of specific language expressly required or authorized by a court decision, state or federal statute or administrative rule, or governmental agency is not a violation of this part; nor is a legal description of real property a violation of this part.

History: En. Sec. 4, Ch. 615, L. 1985; amd. Sec. 1, Ch. 185, L. 1987.

Cross-References

GENERAL

Uniform Commercial Code — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Regulation of utilities, Title 69, ch. 3.

DEFINITIONAL

Securities, 30-10-103.

30-14-1105 through 30-14-1110 reserved.

30-14-1111. Consumer's remedy. (1) Except as otherwise provided in 30-14-1112, if an agreement does not comply with the requirements of 30-14-1103, the seller, lessor, or lender is liable to a consumer who signed the agreement in an amount equal to:

(a) $50 plus any actual damages; and

(b) costs of the action.

(2) A consumer may bring an action under this section in any court of competent jurisdiction.

History: En. Sec. 5, Ch. 615, L. 1985.

30-14-1112. Limitations on remedies. (1) A consumer may not bring an action under 30-14-1111 after the date on which his obligations in connection with the agreement are scheduled to be finally performed.

(2) No seller, lessor, or lender is liable under 30-14-1111 if a good faith attempt is made to comply with requirements of 30-14-1103.

(3) Noncompliance with the requirements of 30-14-1103 does not make a consumer transaction void or voidable if it is otherwise legal, nor may a consumer raise noncompliance as a defense to an obligation to perform in connection with the transaction.

(4) In a class action brought under 30-14-1111, the seller, lessor, or lender is liable under 30-14-1111 for not more than $10,000 plus actual damages.

(5) In any individual transaction, if there is more than one consumer who is party to a single-consumer contract, only one award of statutory damages may be made for that transaction.

(6) No consumer may bring an action under this part on a contract if the consumer was represented at the signing of the contract by an attorney.

(7) Punitive damages may not be assessed in an action brought under this part.

History: En. Sec. 6, Ch. 615, L. 1985.

30-14-1113. Remedies cumulative — waiver void. (1) Nothing in this part precludes a consumer from making any claim or raising any defense that would have been available to the consumer if this part were not in effect.

(2) A consumer may not waive the rights provided by this part, and any such waiver is void.

History: En. Sec. 7, Ch. 615, L. 1985.

Cross-References

Contracts that violate public policy of law, 28-2-702.

What conditions void, 28-2-707.

Part 12

Wheelchair Warranties

30-14-1201. Short title. This part may be known as the "Montana Wheelchair Warranty Act".

History: En. Sec. 1, Ch. 259, L. 1995.

30-14-1202. Definitions. As used in this part, the following definitions apply:

(1) "Collateral costs" mean the expenses incurred by a consumer for the repair of a nonconformity, including the costs of obtaining an alternative wheelchair.

(2) "Consumer" means a person:

(a) who purchases a wheelchair from a wheelchair dealer or manufacturer for purposes other than resale;

(b) to whom the wheelchair is transferred for purposes other than resale if the transfer occurred before the expiration of an express warranty applicable to the wheelchair;

(c) who may enforce the warranty; or

(d) who leases a wheelchair from a wheelchair lessor under a written lease.

(3) "Manufacturer" means a person or an agent of a person who manufactures or assembles wheelchairs. The term includes an importer, factory branch, and any warrantor of the manufacturer's wheelchairs. The term does not include a wheelchair dealer.

(4) "Nonconformity" means a defect that substantially impairs the use, value, or safety of a wheelchair or that is covered by an express warranty applicable to the wheelchair or to components of a wheelchair. The term does not include a condition that is the result of abuse, neglect, or unauthorized modification or alteration of the wheelchair by the consumer.

(5) "Wheelchair" means a manually powered or motor-driven wheelchair, scooter, or other motorized device that is used for mobility assistance, that costs $500 or more, and that a consumer purchases or accepts by transfer.

(6) "Wheelchair dealer" means a person who is in the retail business of selling wheelchairs.

History: En. Sec. 2, Ch. 259, L. 1995.

30-14-1203. Express written warranty for wheelchairs — failure to furnish — implied warranty. (1) A manufacturer who sells a wheelchair to a consumer, either directly or through a wheelchair dealer, shall furnish the consumer with an express written warranty against nonconformity.

(2) The duration of the express written warranty may not be less than 1 year after the date of delivery of the wheelchair to the consumer.

(3) If a manufacturer fails to furnish an express written warranty, the wheelchair is covered by a warranty as if the manufacturer had furnished an express written warranty to the consumer under subsection (1). The implied warranty is for a period of 2 years following the date of delivery of the wheelchair to the consumer.

History: En. Sec. 3, Ch. 259, L. 1995.

30-14-1204. Replacement for nonconformity to warranty. (1) If, after a reasonable number of attempts to repair the nonconformity during the warranty period, the manufacturer or the wheelchair dealer is unable to conform the wheelchair to the warranty by repairing or correcting the nonconformity, the manufacturer shall, at the direction of the consumer either:

(a) replace the wheelchair with a new wheelchair of the same model and style and of comparable value, unless the replacement is impossible because of lack of availability, in which case the manufacturer shall replace it with a wheelchair of similar functional benefit and comparable value. Additionally, the manufacturer shall refund any finance charges and collateral costs to the consumer.

(b) accept return of the wheelchair from the consumer and refund the full purchase price or the total of all lease payments, plus any finance charges, collateral costs, and incidental damages, less a reasonable allowance for the consumer's use of the wheelchair. A reasonable allowance for use may not exceed an amount obtained by multiplying the purchase price by a fraction with a denominator of 1,825 and a numerator of the number of days the wheelchair was usable before the consumer first reported the nonconformity to the wheelchair dealer. A person may not enforce a lease against the consumer after the consumer returns a wheelchair under this subsection.

(2) A manufacturer who replaces a wheelchair in accordance with subsection (1)(a) or refunds the purchase price of a wheelchair in accordance with subsection (1)(b) shall also refund to the dealer the dealer's reasonable costs of the exchange or refund.

(3) A wheelchair returned by a consumer in this state pursuant to this section or by a consumer in another state under a similar law of the other state may not be sold or leased again in this state unless a full disclosure is made to a prospective consumer of the reasons for the return.

History: En. Sec. 4, Ch. 259, L. 1995.

30-14-1205. Reasonable number of attempts to conform — presumption. A reasonable number of attempts to conform a new wheelchair to the applicable warranty is presumed to have been made for the purposes of 30-14-1204 if:

(1) the same nonconformity has been subject to repair two or more times by the manufacturer or the wheelchair dealer during the warranty period and the nonconformity continues to exist; or

(2) the wheelchair is out of service because of a nonconformity for a cumulative total of 45 days during the warranty period after notification of the manufacturer or wheelchair dealer.

History: En. Sec. 5, Ch. 259, L. 1995.

30-14-1206. Liability to manufacturer — wheelchair dealer exemption. A wheelchair dealer is not liable to a manufacturer for a refund or wheelchair replacement in the absence of evidence that indicates that the repairs made by the dealer were carried out in a manner inconsistent with the manufacturer's instructions.

History: En. Sec. 6, Ch. 259, L. 1995.

30-14-1207. Consumer's rights. (1) This part may not be considered to limit the rights or remedies available to a consumer under any other law or contract.

(2) A waiver of rights under this part by a consumer is void.

(3) A consumer's rights and remedies under this part are in addition to the rights and remedies provided in chapter 2A.

(4) If the manufacturer fails to comply with 30-14-1204(1)(a) or (1)(b), a consumer may bring an action to recover for damages caused by a violation of this part. The court may award a consumer who prevails in an action triple the amount of any pecuniary loss. A court may also award costs, disbursements, reasonable attorney fees, and any equitable relief that the court determines is appropriate.

History: En. Sec. 7, Ch. 259, L. 1995.

Part 13 reserved

Part 14

Montana Telemarketing Registration and Fraud Prevention Act

Part Compiler's Comments

Effective Date: Section 17(2), Ch. 342, L. 1999, provided that this part, except for 30-14-1402(3), is effective October 1, 1999.

30-14-1401. Short title. This part may be cited as the "Montana Telemarketing Registration and Fraud Prevention Act".

History: En. Sec. 1, Ch. 342, L. 1999.

30-14-1402. Purpose — scope — rulemaking. (1) The purposes of this part are to require telemarketers to register in this state, to establish standards of conduct for telemarketers, and to provide penalties for violations of this part.

(2) This part does not apply to any claim brought by a person under Title 30, chapter 14, part 5, and the provisions of Title 30, chapter 14, part 5, do not apply to any claim brought by a person pursuant to the provisions of this part.

(3) The department shall adopt rules to implement the provisions of this part. The rules must include but are not limited to rules:

(a) establishing forms and procedures for registration, registration renewal, and bonding of sellers or telemarketers;

(b) for administering a telemarketing fraud consumer awareness program; and

(c) ensuring that proper procedures are in place for maintaining civil and criminal actions for violations of this part.

History: En. Sec. 2, Ch. 342, L. 1999.

Compiler's Comments

Effective Dates: (1) Section 17(1), Ch. 342, L. 1999, provided that [section 2(3)], enacting 30-14-1402(3), is effective on passage and approval. Approved April 19, 1999.

(2) Section 17(2), Ch. 342, L. 1999, provided that [section 2(1) and (2)], enacting 30-14-1402(1) and (2), is effective October 1, 1999.

30-14-1403. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who is or may be required to pay for goods or services offered by a seller or telemarketer through telemarketing.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Goods or services" means any real property, any tangible or intangible personal property, or services of any kind provided or offered to a person.

(4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods or services. The term includes currency values and comparative expressions of value, including but not limited to percentages or multiples.

(5) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

(6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by chance.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won, has been selected to receive, or is eligible to receive a prize or purported prize.

(8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the consumer in exchange for consideration.

(9) "Solicitation" means a written or oral notification or advertisement that:

(a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video, cinematic, telephonic, or electronic means to a consumer; and

(b) in the case of a notification or advertisement other than by telephone, either of the following conditions is met:

(i) the notification or advertisement is followed by a telephone call from a seller or telemarketer; or

(ii) the notification or advertisement induces a response by telephone and, through that response, a seller or telemarketer attempts to make a sale of goods or services.

(10) "Supervised financial organization" means any bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the organization is subject to supervision by an agency of this or any other state of the United States or an agency, bureau, or department of government of the United States.

(11) "Telemarketer" means a person, located within or outside of this state, who in connection with telemarketing initiates or receives telephone calls to or from a consumer in this state. The term includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in telemarketing at the direction of a seller.

(12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to induce the purchase of goods or services and that involves more than one telephone call to a consumer.

History: En. Sec. 3, Ch. 342, L. 1999.

30-14-1404. Registration of sellers or telemarketers. (1) (a) Unless exempt under 30-14-1405, a person may not act as a seller or telemarketer without first having registered with the department.

(b) The initial application for registration must be approved by the department prior to a seller or telemarketer offering or offering for sale consumer goods or services through any medium.

(c) A registered seller or telemarketer shall submit an application for renewal of registration annually to the department.

(d) The application for a certificate of registration or renewal must include but is not limited to the following information:

(i) the true name, current address, telephone number, and location of the seller or telemarketer, including each name under which the seller or telemarketer intends to engage in telemarketing;

(ii) each occupation or business that the seller's or telemarketer's principal owner has engaged in for the 2 years immediately preceding the date of the application;

(iii) whether any principal or manager has been convicted or pleaded guilty to or is being prosecuted by indictment for racketeering, violations of state or federal securities laws, or a theft offense;

(iv) whether there has been entered against any principal or manager an injunction, a temporary restraining order, or a final judgment in any civil or administrative action involving fraud, theft, racketeering, embezzlement, fraudulent conversion, misappropriation of property, or violation of any federal or state consumer protection law. The information must include any pending litigation against the applicant.

(v) whether the seller, at any time during the previous 7 years, has filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

(vi) the true name, current home address, date of birth, social security number, and all other names of the following:

(A) each telemarketer or other person to be employed by the seller;

(B) each person participating in or responsible for the management of the seller's business; and

(C) each person, office manager, or supervisor principally responsible for the management of the seller's business;

(vii) the name, address, and account number of every institution where banking or any other monetary transactions are conducted by the seller; and

(viii) a copy of all scripts, outlines, or presentation material that the seller will require a telemarketer to use when soliciting, as well as all sales information to be provided by the seller to a purchaser in connection with any solicitation.

(2) (a) The application for registration or renewal must be accompanied by a surety bond in the amount of $50,000. The bond must provide for indemnification to the state of Montana for any person suffering a loss as the result of violation of this part.

(b) The surety may for any cause cancel the bond upon giving a 60-day written notice by certified mail to the applicant and to the department. Unless the bond is replaced by that of another surety before the expiration of the 60-day notice of cancellation, the registration of the seller or telemarketer must be treated as lapsed.

(c) The surety bond must remain in effect for 1 year from the period the telemarketing business ceases to operate in this state.

(d) (i) Any business required under this part to file a bond with a registration application may file, in lieu of the bond, a certificate of deposit, cash, or a government bond in the amount of $50,000.

(ii) The department shall hold the cash, certificate of deposit, or government bond for 1 year from the period the telemarketing business ceases to operate in this state or registration lapses in order to pay claims made against the telemarketing business for its activities during its period of operation in this state.

(iii) For the purposes of this section, "government bond" means any United States bond, treasury note, or other public debt obligation of the United States that is unconditionally guaranteed as to both interest and principal by the United States.

(e) The registration of a telemarketing business must be treated as lapsed if at any time the amount of the bond, cash, certificate of deposit, or government bond falls below the amount required by this section.

(f) The aggregate liability of the surety company to the state of Montana for all persons injured by a seller's or telemarketer's violations may not exceed the amount of the bond.

(3) The following constitute a violation of this part:

(a) failure to register, maintain, or renew a registration if required;

(b) failure to meet the surety bond requirement if required to provide a bond;

(c) including any false or misleading information on a registration application; and

(d) misrepresenting that a seller or telemarketer is registered.

(4) A violation of subsection (3) of this section also constitutes a violation of 30-14-103 and is subject to the penalty provisions of 30-14-1414 and the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

History: En. Sec. 4, Ch. 342, L. 1999.

30-14-1405. Exemptions from registration and bonding. The registration and bonding requirements of 30-14-1404 do not apply to:

(1) any securities, commodities, or investment brokers, dealers, or investment advisers or any associates of securities, commodities, or investment brokers, dealers, or investment advisers who are subject to licensure or registration by the securities and exchange commission, the national association of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an

agency of this state or any other state and who are soliciting within the scope of their license or registration;

(2) a person engaged in solicitation for a religious, charitable, political, educational, or other noncommercial purpose or a person soliciting for a domestic or foreign nonprofit corporation that is registered with the Montana secretary of state;

(3) a business-to-business sale;

(4) a person that solicits sales by periodically publishing and delivering a catalog of the person's merchandise to prospective purchasers, if the catalog:

(a) contains a written description or illustration of each item offered for sale;

(b) includes the business or home address of the person soliciting the sale;

(c) includes at least 20 pages of written material and illustrations;

(d) is distributed in more than one state; and

(e) has a circulation by mailing of not less than 150,000;

(5) a person who solicits contracts for maintenance or repair of goods previously purchased from that person or from the person on whose behalf the solicitation is made;

(6) a person soliciting a transaction regulated by the commodity futures trading commission if the person is registered or temporarily licensed with the commodity futures trading commission under the Commodity Exchange Act, Title 7, chapter 1, of the United States Code, and the person's registration or license is not expired, suspended, or revoked;

(7) a supervised financial organization or parent, subsidiary, or affiliate of a supervised financial organization;

(8) an insurer authorized to transact insurance under Title 33, chapter 2, part 1, a person licensed as an insurance producer under Title 33, chapter 17, part 2, or staff members, licensed or unlicensed, of the producer;

(9) a person soliciting the sale of services provided by a satellite or cable television system or a radio or television station authorized by the federal government or this state to provide services in this state;

(10) a telephone company or its subsidiary or agent or other business regulated by the Montana public service commission, the federal communications commission, a rural telephone cooperative or its subsidiary or agent, or a federally licensed cellular telephone or radio telecommunication service provider;

(11) a person soliciting business from consumers that have an existing business relationship with or have previously purchased from the business enterprise for which the person is soliciting;

(12) a person operating a retail business establishment under the same name as that used in the solicitation and:

(a) the products or services are displayed and offered for sale at the business establishment; and

(b) a majority of the person's business involves the consumer obtaining the products or services at the business establishment;

(13) a person soliciting for the sale of a magazine or newspaper of general circulation;

(14) an issuer or a subsidiary of an issuer that is authorized to offer securities for sale in this state;

(15) a book, video, record, or multimedia club, contractual plan, or arrangement:

(a) under which the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise;

(b) that is regulated by the federal trade commission regulation, 16 CFR 425, concerning the use of negative option plans by sellers in commerce; or

(c) that provides for the sale of books, videos, records, multimedia products, or other goods that are not covered by subsection (15)(a) or (15)(b), including continuity plans, subscription arrangements, standing order arrangements, single sales, supplements, or series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;

(16) a real estate salesperson or broker licensed by this state;

(17) a person that has provided telemarketing sales services under the same name and derives 50% of gross telemarketing sales revenue from contracts with persons exempted under this section from registration requirements;

(18) a person soliciting the sale of food or food products if the solicitation is not intended to and does not result in a sale in excess of $100 to a single address.

History: En. Sec. 5, Ch. 342, L. 1999.

30-14-1406. Telemarketing fraud consumer awareness program. The department shall establish and administer a telemarketing fraud consumer awareness program. The program must be funded as provided in 30-14-1407(2).

History: En. Sec. 6, Ch. 342, L. 1999.

30-14-1407. Authority of department, attorney general, and county attorney. (1) The department, the attorney general, and a county attorney have the same authority in enforcing and carrying out the provisions of this part as they have under Title 30, chapter 14, part 1.

(2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must be deposited into the state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this section and to fund the telemarketing fraud consumer awareness program established in 30-14-1405. Any excess civil fines, costs, or fees must be deposited in the general fund.

(3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this section must be deposited into the state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its duties in relation to this section and to establish a telemarketing fraud consumer awareness program similar to the program authorized in 30-14-1405. Any excess civil fines, costs, or fees must be deposited in the general fund.

(4) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the general fund of the county where the action was commenced.

History: En. Sec. 7, Ch. 342, L. 1999.

30-14-1408. Recordkeeping requirements. (1) (a) A telemarketer shall keep records subject to this section for a period of 24 months from the date the record is produced.

(b) The records that must be kept for the 24-month period include:

(i) all substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(ii) the name and last-known address of each prize recipient and the prize awarded;

(iii) the name and last-known address of each consumer, the goods or services purchased, the date the goods or services were shipped or provided, the amount of goods or services provided, and the amount paid by the consumer for the goods or services;

(iv) the name, any fictitious name used, the last-known home address and telephone number, and the job title for all current and former employees directly involved in telephone sales; however, if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(v) all written authorizations required to be provided or received under this part.

(2) In the event of any dissolution or termination of a telemarketer's business, the principal of that telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's business, the successor shall maintain all records required under this section.

History: En. Sec. 8, Ch. 342, L. 1999.

30-14-1409. Acts and practices not governed by part. The following acts and practices are not subject to the provisions of this part:

(1) telephone calls in which the sale of goods or services is not completed and payment or authorization of payment is not required until after a face-to-face sales presentation by the seller or telemarketer; and

(2) telephone calls initiated by a consumer that are not the result of any solicitation by a seller or telemarketer.

History: En. Sec. 9, Ch. 342, L. 1999.

30-14-1410. Disclosure and contract requirements. (1) When contacting a consumer, a seller or telemarketer shall promptly disclose in a clear and conspicuous manner the following:

(a) the identity of the seller or telemarketer;

(b) that the purpose of the call is to sell goods or services;

(c) the nature of the goods or services; and

(d) that a purchase or payment is not necessary to be able to win a prize or participate in a prize promotion.

(2) Prior to requesting any payment from the consumer a seller or telemarketer shall disclose in a clear and conspicuous manner the following information:

(a) the total cost of the goods or services;

(b) all material restrictions, limitations, and conditions pertaining to the purchase of the goods or services;

(c) in any prize promotion:

(i) the odds of being able to receive the prize or, if the odds are not calculable in advance, the factors used in calculating the odds; and

(ii) the "no-purchase no-payment" method of participating in the prize promotion with either instructions on how to participate or an address or a local or toll-free telephone number that consumers may write or call for information on how to participate.

(3) A seller or telemarketer may not misrepresent, directly or by implication, any of the following information:

(a) any material aspect of performance, effectiveness, nature, or basic characteristics of goods or services;

(b) any material aspect of the nature or terms of the seller's or telemarketer's refund, cancellation, exchange, or repurchase policies; or

(c) any material aspect of a prize promotion, including but not limited to the nature or value of the prize or that a purchase or payment is required to win a prize or to participate in a prize promotion.

(4) (a) Except as provided in subsection (6), in addition to any other right to revoke an offer, in the case of a sale made by telephone, the buyer may cancel the

sale at any time prior to signing an agreement or offer to purchase the goods or services.

(b) Cancellation occurs:

(i) when written notice of cancellation is given to the seller or telemarketer; or

(ii) when written notice of cancellation, properly addressed and with postage prepaid, is deposited in the mail.

(c) A notice of cancellation does not have to be in the form prescribed by the seller or telemarketer if it indicates the intention of the buyer to cancel the sale of goods or services.

(d) In the case of goods, a telemarketing sale may not be canceled if the goods cannot be returned to the seller or telemarketer in substantially the same condition as when received by the buyer.

(5) (a) Except as provided in subsection (6), a telemarketing sale may not be considered final until the purchaser receives the notice required by subsection (5)(b).

(b) A seller or telemarketer shall furnish the purchaser, in the same language as that principally used in the sales presentation, a written notice, in not less than 10-point boldface type, containing a statement in substantially the following form:

"You, the purchaser, may cancel this transaction without any penalty or obligation at any time prior to midnight of the third business day after receipt of this notice. If you cancel, any payments made by you under the sale will be returned within 10 business days of the day your written notice of cancellation is received by the seller and any security interest connected to this transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this sales contract; or you may, if you wish, comply with the seller's instructions regarding returning the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick up the goods within 20 days of the date of your notice of cancellation or if the seller does not agree to assume the expense and risk of the return of the goods to the seller, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to return the goods, then you remain liable for the performance of all your obligations under the sales contract.

To cancel this transaction, mail, deliver, or telegram a written notice of cancellation to (name of seller) at the following address (address of the seller)."

(c) In addition to the notice required in subsection (5)(b), the seller or telemarketer shall furnish the purchaser with:

(i) the seller's or telemarketer's name and the name of the person to whom a notice of cancellation is to be given if different from the seller's or telemarketer's name;

(ii) the legal name of the company for whom the seller or telemarketer is soliciting;

(iii) the seller's or telemarketer's street address and telephone number; and

(iv) the date and a description of the telephone solicitation.

(6) A sale is not subject to the requirements of subsections (4) and (5) if the seller or telemarketer, at a minimum, has a policy of:

(a) accepting returns or canceling services in connection with the return of unused and undamaged goods or canceled services for a period of not less than 7 days after the date of delivery to the consumer and providing a cash refund for a cash purchase or issuing a credit for a credit purchase applied to the account that was debited;

(b) disclosing the seller's or telemarketer's refund and return policy to the consumer by telephone or in written material included with advertising or promotional material or with the delivery of the goods or services; and

(c) restoring payments or issuing credits pursuant to subsection (6)(a) within 30 days after the date on which the seller or telemarketer receives the returned goods or notice of cancellation of services. A seller or telemarketer who discloses in writing that a sale is subject to "satisfaction guaranteed", "free inspection", "a no-risk guarantee", or similar words or phrases must be considered to have met the review and return for refund policy requirements of this subsection.

(7) It is an unfair and deceptive act or practice to fail to comply with or to misrepresent the requirements of this section.

(8) In addition to subsection (7), it is a violation of this part for any seller or telemarketer to engage in any other unfair or deceptive conduct that would create a likelihood of confusion or misunderstanding to any reasonable consumer.

(9) Failure to comply with the provisions of this section is a violation of 30-14-103 and is subject to the penalty provisions of 30-14-1414 and the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

History: En. Sec. 10, Ch. 342, L. 1999.

30-14-1411. Prohibited acts and practices. (1) It is a violation of this part for a seller or telemarketer, purposely or knowingly, to engage in the following conduct:

(a) advertise or represent that registration as a seller or telemarketer equals an endorsement or approval by the state or any political subdivision of the state;

(b) assist, support, or provide substantial assistance to any telemarketer when the seller knew or should have known that the telemarketer was engaged in any act or practice violating 30-14-1408 or this section;

(c) request a fee in advance to remove derogatory information from or improve a person's credit history or credit record;

(d) request or receive payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the person in a prior telemarketing transaction; however, this subsection does not apply to services rendered to a person by a licensed attorney;

(e) obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, bond, or other account without the person's express written authorization; or

(f) procure the services of any professional delivery, courier, or other pickup service to obtain immediate receipt or possession of a person's payment unless the goods are delivered with the opportunity to inspect them before any payment is collected.

(2) Failure to comply with the provisions of subsection (1) constitutes a violation of 30-14-103 and is subject to the penalty provisions of 30-14-1414 and the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

History: En. Sec. 11, Ch. 342, L. 1999.

30-14-1412. Abusive acts and practices. (1) It is an abusive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:

(a) use threatening, intimidating, or profane or obscene language;

(b) engage any person repeatedly or continuously with behavior a reasonable person would consider annoying, abusive, or harassing;

(c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or telemarketer;

(d) engage in telemarketing to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location; or

(e) engage in any other conduct that would be considered abusive to any reasonable consumer.

(2) The department or the attorney general may seek injunctive or declaratory relief or any other remedy provided in Title 30, chapter 14, part 1, for any violations of this section.

History: **En. Sec. 12, Ch. 342, L. 1999.**

30-14-1413. Civil remedies — venue — burden of proof. (1) The sale of any goods or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or telemarketer pursuant to the provisions of 30-14-1404.

(2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a prohibited act or practice is entitled to recover actual damages or $500, whichever is greater, attorney fees, court costs, and any other remedies provided by law.

(3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an abusive act or practice is entitled to receive injunctive or declaratory relief.

(4) (a) The department, the attorney general, or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter 14, part 1.

(b) The proper place for trial for an action based on a claim of a violation of this part is the district court of Lewis and Clark County or the county in which the alleged violation occurred.

(5) In a civil proceeding alleging a violation of this part, the burden of proving an exemption under 30-14-1405 or an exception to a definition contained in 30-14-1403 is on the person claiming the exemption or exception.

History: **En. Sec. 13, Ch. 342, L. 1999.**

30-14-1414. Penalties — misdemeanor and felony violations — burden of proof. (1) (a) A person who fails to follow the requirements of 30-14-1404, 30-14-1408, 30-14-1410, 30-14-1411, or 30-14-1412 commits the offense of failure to comply with the requirements of this part. Except as otherwise provided in 30-14-1411, this offense is specifically intended to be an absolute liability offense as provided for in 45-2-104.

(b) A person convicted of the offense of failure to comply with the requirements of this part shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) Upon a second or subsequent conviction for the offense of failure to comply with the requirements of this part, a person shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(2) (a) A person commits the offense of telemarketing fraud when the person knowingly violates this part with the purpose of depriving an owner of property.

(b) A person convicted of the offense of telemarketing fraud in which the value of the property does not exceed $500 shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) A person convicted of the offense of telemarketing fraud in which the value of the property exceeds $500 or the person has engaged in telemarketing fraud as part of a common scheme shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) In any criminal proceeding alleging a violation of this part, the burden of producing evidence to support a defense based on an exemption under 30-14-1405 or an exception from a definition in 30-14-1403 is on the person claiming the exemption or exception.

History: En. Sec. 14, Ch. 342, L. 1999.

CHAPTER 15

FOREIGN-TRADE ZONES

Part 1 — General Provisions

30-15-101. Authority to establish, operate, and maintain a foreign-trade zone.
30-15-102. Exemption from state licensing requirements and regulations.
30-15-103. Jurisdiction of state.
30-15-104. Taxation of corporations operating foreign-trade zones and their goods.

Part 1

General Provisions

30-15-101. Authority to establish, operate, and maintain a foreign-trade zone. (1) The state of Montana, a local government unit, or a private or public corporation organized in Montana for the purpose of operating a foreign-trade zone in Montana may apply for the right to and, if the right is granted, establish, operate, and maintain a foreign-trade zone under 19 U.S.C. 81a through 81u.

(2) The governing body of a local government unit may contract with a private or public corporation to operate and maintain a foreign-trade zone that the local government unit has been granted the right to establish, operate, and maintain.

(3) Any activity authorized by the United States to be conducted within a foreign-trade zone may be conducted within a foreign-trade zone operated by a local government unit or Montana corporation under this section.

History: En. Sec. 1, Ch. 674, L. 1979.

30-15-102. Exemption from state licensing requirements and regulations. Goods may be held within a foreign-trade zone exclusive of any license, permit, or regulation of the state or any political subdivision of the state. Such goods may be sold or traded subject to the laws of the United States.

History: En. Sec. 2, Ch. 674, L. 1979.

Cross-References

Licensing — discrimination based on nationality prohibited, 49-3-204.

30-15-103. Jurisdiction of state. The state of Montana reserves jurisdiction in a foreign-trade zone in all civil and criminal matters except those related to customs, diversity suits with the requisite amount in controversy, or suits involving a federal question.

History: En. Sec. 3, Ch. 674, L. 1979.

30-15-104. Taxation of corporations operating foreign-trade zones and their goods. Private or public corporations operating foreign-trade zones are subject to all taxes imposed upon them under the provisions of Title 15.

History: En. Sec. 4, Ch. 674, L. 1979; amd. Sec. 3, Ch. 101, L. 1985.

Cross-References

Corporation license or income tax, Title 15, ch. 31.

CHAPTER 16

SMALL BUSINESS LICENSING COORDINATION

Part 1 — General Provisions

30-16-101. Short title.
30-16-102. Purpose.
30-16-103. Definitions.
30-16-104. Rulemaking.

Part 2 — Licensing Coordination Center

30-16-201. Designation of small business licensing coordination center — duties of center.
30-16-202. Information availability.
30-16-203. New licenses, permits, or modifications.
30-16-204. Authority to issue licenses.

Part 3 — Business Registration and Licensing—Board of Review

30-16-301. Business registration and licensing plan — administration.
30-16-302. Board of review.
30-16-303. Participation of state agencies.

Part 1

General Provisions

30-16-101. Short title. This chapter may be cited as the "Montana Small Business Licensing Coordination Act".

History: En. Sec. 1, Ch. 453, L. 1981.

30-16-102. Purpose. The purposes of this chapter are to:

(1) eliminate licensing requirements, administrative procedures, and forms that are unnecessary for the protection of the public interest;

(2) streamline and minimize the total government and business costs of necessary licensing and inspection procedures;

(3) distribute equitably the costs of licensing; and

(4) provide a convenient, accessible, and timely system for the business community to acquire and maintain the necessary state registrations and licenses to conduct business.

History: En. Sec. 2, Ch. 453, L. 1981; amd. Sec. 1, Ch. 744, L. 1991.

30-16-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board of review" means the body established to provide policy direction to the department of revenue in designing and recommending to the legislature the implementation of a plan for a business registration and licensing system.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) (a) "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity.

(b) License does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, and Title 75, chapters 1 through 3, 5 through 7, 10, 15, 16, and 20, which are excluded from the coverage of this chapter.

(4) "Person" means an individual, sole proprietorship, partnership, association, cooperative, limited liability company, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies.

(5) "Plan" means the business registration and licensing system and the procedures developed by the board of review that are under the administrative control of the department.

History: En. Sec. 3, Ch. 453, L. 1981; amd. Sec. 2, Ch. 744, L. 1991; amd. Sec. 1, Ch. 355, L. 1995; amd. Sec. 9, Ch. 366, L. 1997; amd. Sec. 5, Ch. 54, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 54 in (2) substituted "department of revenue" for "department of commerce" and substituted "2-15-1301" for "2-15-1801"; in (3)(b) after "Title 75" inserted "chapters 1 through 3, 5 through 7, 10, 15, 16, and 20"; and made minor changes in style. Amendment effective March 15, 1999.

30-16-104. Rulemaking. The board of review established in 30-16-302:

(1) shall adopt rules governing the identification and use of electronic forms of signature to fulfill licensing requirements for licensees included in this part;

(2) may adopt rules to establish the anniversary date for the renewal of licenses issued to licensees included in this part; and

(3) shall consult with the pertinent licensing agency before issuing rules concerning license renewal dates.

History: En. Sec. 1, Ch. 366, L. 1997.

Part 2

Licensing Coordination Center

30-16-201. Designation of small business licensing coordination center — duties of center. The department shall administer a small business licensing coordination center. The small business licensing coordination center shall:

(1) document and analyze current licensing requirements, fees, and procedures;

(2) recommend elimination of unnecessary licensing requirements, administrative procedures, or forms or parts of forms that can be eliminated in the public interest;

(3) recommend efficient and effective improvements in the administration and enforcement of licensing laws, including gathering of information that facilitates the development of a permanent master license certificate;

(4) recommend revisions in the license fee structure to distribute the cost of licenses equitably and to provide financing for continuing improvements in licensing administration and enforcement;

(5) develop and upon request distribute information concerning state requirements for starting and operating a business in Montana;

(6) provide assistance to business enterprises to facilitate their compliance with state licensing requirements;

(7) maintain a supply of license and permit forms or applications for all licenses and actively assist the business community in answering application questions;

(8) maintain a master list of the business types existing in the state and a corresponding list of the licenses or permits needed to operate or start that type of business;

(9) maintain a copy of the Administrative Rules of Montana in order to provide an applicant with the basic rules of any agency with regard to licensing;

(10) encourage agencies to provide informational brochures through the center, especially in the case of complex licensing procedures;

(11) maintain contact with licensing agencies in order to enable the center to assist an applicant with setting up appointments or otherwise facilitate the application process; and

(12) perform other administrative tasks delegated to the center to improve state business license administration.

History: En. Sec. 4, Ch. 453, L. 1981; amd. Sec. 3, Ch. 744, L. 1991; amd. Sec. 66, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 deleted former (13) that read: "(13) on January 4, 1993, present a report to the legislature containing its analysis and recommendations as required in subsections (1) through (4)"; and made minor changes in style. Amendment effective March 15, 1999.

Cross-References

State employees — not to assist person in obtaining license for a fee, 2-2-121.

"Agency action" — includes issuing license, 2-3-102.

License defined, 2-4-102.

Licenses — administrative procedure, 2-4-631.

Purpose of agency evaluation, 2-8-101.

Licensing — within quasi-judicial function, 2-15-102.

City Courts — jurisdiction for collection of license fee of city, 3-11-103.

Ferries — establishment and license tax, Title 7, ch. 14, part 28.

License for street railroad, 7-14-4303.

General county licensing authority, Title 7, ch. 21, part 21.

Licensing of itinerant vendors, Title 7, ch. 21, part 23.

Licensing of transient retail merchants, Title 7, ch. 21, part 24.

Licensing of hucksters, Title 7, ch. 21, part 25.

Municipal licensing authority, Title 7, ch. 21, part 41.

Municipal regulation of business and commodities, Title 7, ch. 21, part 42.

Licensing and regulating vehicles engaged in transporting persons and property, 7-21-4205.

Suspension of license fees for persons in military service, 10-1-605.

State Tax Appeal Board — appeals regarding business licenses, 15-2-201.

Freight line company license tax, Title 15, ch. 55, part 1.

License tax on producers and importers of gypsum and cement, 15-59-102.

License and security of gasoline distributors, 15-70-202.

Special fuel dealer's licenses, 15-70-302.

Beer and wine licenses, Title 16, ch. 4, part 1.

All-beverages licenses, Title 16, ch. 4, part 2.

Special alcoholic beverage licenses, Title 16, ch. 4, part 3.

Cigarette licenses, 16-11-120.

Licensing textbook dealers, 20-7-604.

Race meet licensing, 23-4-201.

Card games — licensing by local governing bodies, 23-5-321.

Auctions — licensing powers of cities and towns, 30-11-516.

Licensing of weighing devices, 30-12-203.

Foreign-trade zone — exemption from state licensing requirements, 30-15-102.

Foster home licensing, 41-3-1141.

Licensing nondiscrimination, 49-3-204.

Emergency medical service licensing, 50-6-306.

Fire protection equipment — licensing, 50-39-101.

Food establishments — licensing, Title 50, ch. 50, part 2.

Hotel and motel licensing, Title 50, ch. 51, part 2.

Tourist campground and trailer court licensing, Title 50, ch. 52, part 2.

Day-care center licensing, 52-2-721.

Aeronautics licensing, Title 67, ch. 3.

Portable sawmill license, 76-13-502.

Slaughterhouse license, 81-9-201.

Licensing of rendering or disposal plants, 81-9-301.

Hide dealer's or buyer's license fee, 81-9-411.

Egg dealer's and egg grader's license, 81-20-201.

Licensing of milk plants and dairies selling milk or cream for public consumption, 81-21-102.

License required to operate manufactured dairy products plant, 81-22-201.

License required for milk or cream route, 81-22-204.

Milk — licenses to producers, producer-distributors, distributors, and jobbers, 81-23-201.

Petroleum dealer licenses, 82-15-105.

Wharves and docks licenses, 85-16-101.

30-16-202. Information availability. The small business licensing coordination center shall encourage and invite federal and local government agencies to make license and permit information available to applicants through the coordination center. The center shall, where possible, advise applicants of federal and local government agency license and permit requirements.

History: En. Sec. 7, Ch. 453, L. 1981.

Cross-References

Ferries — establishment and license tax, Title 7, ch. 14, part 28.

License for street railroad, 7-14-4303.

General county licensing authority, Title 7, ch. 21, part 21.

Licensing of itinerant vendors, Title 7, ch. 21, part 23.

Licensing of transient retail merchants, Title 7, ch. 21, part 24.

Licensing of hucksters, Title 7, ch. 21, part 25.

Municipal licensing authority, Title 7, ch. 21, part 41.

Municipal regulation of business and commodities, Title 7, ch. 21, part 42.

Licensing and regulating vehicles engaged in transporting persons and property, 7-21-4205.

30-16-203. New licenses, permits, or modifications. Each state agency shall report to the coordination center any new license or permit or modification of an existing license or permit that becomes effective as a requirement after April 20, 1981, together with the applicable forms and pertinent rules and information.

History: En. Sec. 8, Ch. 453, L. 1981.

30-16-204. Authority to issue licenses. Regardless of any authority delegated to the department to implement the provisions of this chapter, the authority to issue a license remains with the agency authorized by law to issue the license.

History: En. Sec. 4, Ch. 744, L. 1991.

Part 3

Business Registration and Licensing — Board of Review

30-16-301. Business registration and licensing plan — administration. (1) The provisions of 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:

(a) an anniversary date for license renewal that is set by the board of review;

(b) an electronic means of verifying the information required in the license application; and

(c) credit card discounts in relation to fees required for licensure.

(2) The department shall designate an employee in charge of administering the plan whose duties include those of executive secretary of the board of review.

History: En. Sec. 2, Ch. 355, L. 1995; amd. Sec. 10, Ch. 366, L. 1997; amd. Sec. 6, Ch. 54, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 54 in (2) after "department" deleted "of revenue" and substituted "an employee" for "a deputy director". Amendment effective March 15, 1999.

30-16-302. Board of review. (1) There is a board of review. The board of review's duty is to provide policy direction to the department of revenue in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, commerce, environmental quality, livestock, revenue, justice, and public health and human services, the secretary of state, the president of the senate or a designee, and the speaker of the house or a designee. If an agency that is not a member of the board of review requests inclusion in the streamlined registration and licensing plan as provided in 30-16-303, that agency's director must be appointed to the board of review.

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter to:

(a) establish interagency policy and guidelines for the plan;

(b) review the findings, status, and problems of system operations and recommend courses of action; and

(c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues.

(4) The board of review may implement a plan for streamlined registration and licensing to include licenses not specified in 30-16-301, as provided in 30-16-303.

History: En. Sec. 3, Ch. 355, L. 1995; amd. Sec. 11, Ch. 366, L. 1997; amd. Sec. 1, Ch. 7, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 7 in (1) in second sentence after "environmental quality" inserted "livestock", after "secretary of state" deleted "the director of the office of budget and program planning, the commissioner of labor and industry", and inserted third sentence allowing further appointment to the board of review upon request; deleted former (3)(d) that read: "(d) recommend, in questionable cases, whether a particular license falls within the scope of this chapter"; substituted language in (4) allowing the board of review to implement a plan for streamlined registration and licensing to include unspecified licenses for former language that read: "In developing a recommended plan for streamlined registration and licensing procedures, the board of review shall consider the experience gained from the consolidated employer registration process implemented by the department of revenue and the department of labor and industry"; and made minor changes in style. Amendment effective February 11, 1999.

30-16-303. Participation of state agencies. (1) The legislature directs full participation in the implementation of this chapter by:

(a) the departments of agriculture, commerce, environmental quality, revenue, justice, labor and industry, and public health and human services;

(b) the secretary of state;

(c) the public service commission; and

(d) other agencies as directed by the governor.

(2) The board of review may include licenses not specified in 30-16-301 in a plan for streamlined registration and licensing if:

(a) the agency administering the license requests that the license be included in the plan;

(b) the board of review approves including the license by a majority vote of a quorum of the board of review; and

(c) licensees affected by the license's inclusion in the plan are given 60 days' notice of the plan's implementation and the notice sets forth in detail the changes in the licensing procedures.

(3) If a license is included in a streamlined registration and licensing plan pursuant to subsection (2):

(a) the agency administering the license may provide for a variance in the timing of the payment of the license fee and a variance in the application form, filing date, and penalty provisions in order to conform with the plan's criteria;

(b) the board of review shall provide for the equitable proration to the agency administering the license of any fees paid by a licensee prior to the plan's implementation; and

(c) the license must be processed and issued by the department of revenue as provided in this chapter.

(4) In order to defray the costs associated with administering a streamlined registration and licensing plan, the department may require a transfer of funds from the participating agencies. The amount of funds transferred by an agency must be based on the number of licenses processed and issued on behalf of that agency versus the total number of licenses processed and issued under the streamlined registration and licensing plan.

History: En. Sec. 4, Ch. 355, L. 1995; amd. Sec. 2, Ch. 7, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 7 inserted (2) and (3) regarding inclusion of unspecified licenses in a plan for streamlined registration and licensing; inserted (4) regarding transfers of funds to defray costs associated with administration of streamlined registration and licensing; and made minor changes in style. Amendment effective February 11, 1999.

TITLE 31

CREDIT TRANSACTIONS AND RELATIONSHIPS

Ch.
1. Credit Transactions.
2. Debtor and Creditor Relationships.
3. Related Credit Practices.

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CREDIT TRANSACTIONS

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31-1-723. Prohibited acts.
31-1-724. Civil remedies.
31-1-725. Criminal penalties.

Chapter Cross-References

Creation of state debt, Art. VIII, sec. 8, Mont. Const.

Debt limitations of local government entities, Art. VIII, sec. 10, Mont. Const.

Use of money borrowed by local government entity, Art. VIII, sec. 11, Mont. Const.

Department of Commerce — head, 2-15-1801.

Trust indentures and mortgages under housing law, 7-15-4463, 7-15-4506, 7-15-4521 through 7-15-4532.

Gambling on cash basis, 23-5-157.

U.C.C. — sales, Title 30, ch. 2.

U.C.C. — negotiable instruments, Title 30, ch. 3.

U.C.C. — letters of credit, Title 30, ch. 5.

U.C.C. — secured transactions, Title 30, ch. 9.

Sales of personal property, Title 30, ch. 11, part 2.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Authority of state banks to make real estate loans, 32-1-430.

False statement to obtain loan, 32-1-474.

Credit life insurance and credit disability insurance, Title 33, ch. 21, part 1.

Attorney prohibited from buying claim or demand for purpose of bringing action, 37-61-408.

Defrauding creditors, 45-6-315.

Issuing bad check, 45-6-316.

Deceptive practices, 45-6-317.

Chain distributor schemes, 45-6-319.

Discrimination in credit prohibited, 49-2-306, 49-3-206.

Method of filing lien on motor vehicles, 61-3-103.

Monopolies in financing sale of motor vehicles, Title 61, ch. 4, part 4.

Mortgages generally, Title 71, ch. 1.

Small Tract Financing Act of Montana, Title 71, ch. 1, part 3.

Pledges, Title 71, ch. 2.

Liens, Title 71, ch. 3.

Energy conservation in agriculture 90-2-140.

State-owned building retrofitting, 90-2-141.

Part 1

Loans of Money — Interest Rates

Part Cross-References

Rate of interest chargeable by building and loan associations, 32-2-401 through 32-2-406.

31-1-101. Loan of money — what constitutes. A loan of money is a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the law on loan for use.

History: En. Sec. 2580, Civ. C. 1895; re-en. Sec. 5206, Rev. C. 1907; re-en. Sec. 7720, R.C.M. 1921; Cal. Civ. C. Sec. 1912; Field Civ. C. Sec. 966; re-en. Sec. 7720, R.C.M. 1935; R.C.M. 1947, 47-119.

Cross-References

Financing programs of Board of Investments, 17-5-1505.

Contracts — interpretation, Title 28, ch. 2, 3.

Assignment to be considered loan, 31-1-308.

Banks borrowing money — limitations, 32-1-412.

Banks borrowing money for capital purposes — status of capital, 32-1-413.

Authority of state banks to make real estate loans, 32-1-430.

Limitation on loans, 32-1-432.

Loans to managing officer, 32-1-467.

False statement to obtain loan, 32-1-474.

Building and loan associations — limitation on loans, 32-2-415.

Associations may make loans guaranteed under Servicemen's Readjustment Act of 1944, 32-2-420.

National Housing Act loans, Title 32, ch. 2, part 5.

Credit unions — loans and insurance, Title 32, ch. 3, part 6.

Development Corporation Act — purposes, 32-4-102.

Consumer loan businesses, Title 32, ch. 5.

Deceptive practices — false statement to obtain loan, 45-6-317.

Loans for use or exchange — personal property, Title 70, ch. 7.

Rangeland improvement loan program, 76-14-111.

Conservation practice loan program, 76-15-541.

Agricultural loan authority — general provisions of loan agreements, 80-12-201.

Alternative or renewable energy grants or loans, Title 90, ch. 4, part 1.

Montana Health Facility Authority — loan limitation, 90-7-213.

31-1-102. Loan to be repaid in current money. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

History: En. Sec. 2581, Civ. C. 1895; re-en. Sec. 5207, Rev. C. 1907; re-en. Sec. 7721, R.C.M. 1921; Cal. Civ. C. Sec. 1913; Field Civ. C. Sec. 967; re-en. Sec. 7721, R.C.M. 1935; R.C.M. 1947, 47-120.

Cross-References

Contracts — interpretation, Title 28, ch. 2, 3.

Money defined, 30-1-201.

Money of account, Title 30, ch. 12, part 6.

31-1-103. Loan presumed to be on interest. Whenever a loan of money is made, it is presumed to be made upon interest unless it is otherwise expressly stipulated at the time in writing.

History: En. Sec. 2582, Civ. C. 1895; re-en. Sec. 5208, Rev. C. 1907; re-en. Sec. 7722, R.C.M. 1921; Cal. Civ. C. Sec. 1914; Based on Field Civ. C. Sec. 968; re-en. Sec. 7722, R.C.M. 1935; R.C.M. 1947, 47-121.

Cross-References

Interest payable at bank on Saturday — how paid, 32-1-485.

Limit on interest and penalties — building and loan associations, 32-2-402.

Statement of interest rates — canceling loans, 32-2-403.

Loan for use, Title 70, ch. 7, part 1.

Loan for exchange, Title 70, ch. 7, part 2.

31-1-104. Interest defined. Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money.

History: En. Sec. 2583, Civ. C. 1895; re-en. Sec. 5209, Rev. C. 1907; re-en. Sec. 7723, R.C.M. 1921; Cal. Civ. C. Sec. 1915; Based on Field Civ. C. Sec. 969; re-en. Sec. 7723, R.C.M. 1935; R.C.M. 1947, 47-122.

31-1-105. Annual rate. When a rate of interest is prescribed by a law or contract without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

History: En. Sec. 2584, Civ. C. 1895; re-en. Sec. 5210, Rev. C. 1907; re-en. Sec. 7724, R.C.M. 1921; Cal. Civ. C. Sec. 1916; Field Civ. C. Sec. 970; re-en. Sec. 7724, R.C.M. 1935; R.C.M. 1947, 47-123.

31-1-106. Legal interest. (1) Except as otherwise provided by the Uniform Commercial Code or 31-1-111 and 31-1-112, unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of 10% a year after they become due on:

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) moneys lent or due on any settlement of accounts from the date on which the balance is ascertained; and

(d) moneys received for the use of another and detained from him.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year.

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R.C.M. 1921; Cal. Civ. C. Sec. 1917; amd. Sec. 1, Ch. 144, L. 1933; re-en. Sec. 7725, R.C.M. 1935; amd. Sec. 11-130, Ch. 264, L. 1963; amd. Sec. 38, Ch. 234, L. 1971; amd. Sec. 11, Ch. 185, L. 1977; R.C.M. 1947, 47-124; amd. Sec. 3, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 263, L. 1985.

Cross-References

Rate of interest on bonds — limitations and exceptions, 17-5-102.

Rate of interest on special assessments — limitations, 17-5-103.

Amount of interest on judgments, 25-9-205.

Damage claims — interest, 27-1-211.

Validity of interest rate set by contract, 27-1-213.

Acceptance of principal waives claim to interest, 27-1-214.

Offer of performance stops running of interest, 28-1-1202.

General validity of security agreement, 30-9-201.

31-1-107. Interest rate allowed by agreement. (1) Parties may agree in writing for the payment of any rate of interest that does not exceed the greater of 15% or an amount that is 6 percentage points per annum above the prime rate of major New York banks, as published in the Wall Street Journal edition dated 3 business days prior to the execution of the agreement. Interest must be allowed according to the terms of the agreement.

(2) A loan that is not usurious when made is lawful for the duration of the loan, provided the loan agreement is not substantially changed. This subsection does not apply to loan renewals.

(3) The provisions of this section do not apply to regulated lenders as defined in 31-1-111.

History: En. Sec. 2586, Civ. C. 1895; re-en. Sec. 5212, Rev. C. 1907; amd. Sec. 1, Ch. 36, L. 1913; amd. Sec. 1, Ch. 62, L. 1919; re-en. Sec. 7726, R.C.M. 1921; Cal. Civ. C. Sec. 1918; re-en. Sec. 7726, R.C.M. 1935; amd. Sec. 1, Ch. 503, L. 1975; R.C.M. 1947, 47-125; amd. Sec. 2, Ch. 373, L. 1979; amd. Sec. 4, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 567, L. 1983; amd. Sec. 1, Ch. 588, L. 1993.

Cross-References

Amount of interest on judgments, 25-9-205.

Limit of rate by contract, 27-1-213.

Wage brokers — rate of interest on loans, 31-1-305.

Pawnbrokers — interest, 31-1-401.

Building and loan associations — interest rate and penalties, 32-2-402.

Consumer loan businesses — charges, refunds, penalties, and filing fees, 32-5-301.

Conservation practice loan program — rate set by rule, 76-15-547.

Montana agricultural loan authority — rate, 80-12-201.

Montana Health Facility Authority — rate, 90-7-202.

31-1-108. Penalty for usury — action to recover excessive interest. (1) The taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107 shall be deemed a forfeiture of a sum double the amount of interest which the note, bill, or other evidence of debt carries or which has been agreed to be paid thereon.

(2) When a greater rate of interest has been paid, the person by whom it has been paid, his heirs, assigns, executors, or administrators may recover from the person, firm, or corporation taking, receiving, reserving, or charging same a sum double the amount of interest so paid, provided that such action shall be brought within 2 years after the payment of said interest, and provided that, before any suit may be brought to recover such usurious interest, the party bringing suit must make written demand for return of said interest so paid.

History: En. Sec. 2, Ch. 36, L. 1913; re-en. Sec. 7727, R.C.M. 1921; re-en. Sec. 7727, R.C.M. 1935; R.C.M. 1947, 47-126.

Cross-References

Amount of interest on judgments, 25-9-205.

Right to interest, 27-1-211.

Actions to enforce penalty or forfeiture or other statutory liability, 27-2-211.

31-1-109. When interest becomes part of principal. The parties may, in any contract in writing whereby any debt is secured to be paid, agree that, if the interest on such debt is not punctually paid, it shall become a part of the principal and thereafter bear the same rate of interest as the principal debt.

History: En. Sec. 2587, Civ. C. 1895; re-en. Sec. 5213, Rev. C. 1907; re-en. Sec. 7728, R.C.M. 1921; Cal. Civ. C. Sec. 1919; re-en. Sec. 7728, R.C.M. 1935; R.C.M. 1947, 47-127.

Cross-References

Amount of interest on judgment, 25-9-205.

Written contracts, Title 28, ch. 2, part 9.

31-1-110. Renumbered 25-9-205 by Code Commissioner, 1979.

31-1-111. Definition of regulated lender. The term "regulated lenders" as used in 31-1-112 means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money.

History: En. Sec. 1, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 406, L. 1985; amd. Sec. 1, Ch. 294, L. 1991.

Cross-References

Banks and trust companies, Title 32, ch. 1.

Building and loan associations, Title 32, ch. 2.

Credit unions, Title 32, ch. 3.

Development corporations, Title 32, ch. 4.

Consumer loan businesses, Title 32, ch. 5.

31-1-112. Interest rate limitation exemption — regulated lenders — merchant finance. (1) A regulated lender is exempt from all limitations on the rate of interest that it may charge and is exempt from the operation and effect of all usury statutes.

(2) A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits.

History: (1)En. Sec. 2, Ch. 275, L. 1981; (2)En. Sec. 4, Ch. 276, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 22, L. 1983.

31-1-113. Limitation of rule of 78ths. The sum of the monthly time balances method of computing interest or refunds on prepayment, which is also known as the rule of 78ths, may not be used in any loan agreement or retail installment contract unless the term of the loan or contract does not exceed 61 months.

History: En. Sec. 3, Ch. 135, L. 1983.

Cross-References

Requirements of retail installment contracts, 31-1-231.

Refunds on prepayment, 31-1-242.

Consumer loan businesses — charges, refunds, penalties and filing fees, 32-5-301.

31-1-114 reserved.

31-1-115. Issuing credit cards to minors — collection of debt. (1) An issuer of a credit card or similar loan advance access device may not issue a credit card or similar loan advance access device to a minor, as defined in 41-1-101, residing in this state without first obtaining consent to the issuance from the minor's parent or legal guardian.

(2) An issuer of a credit card or similar loan advance access device that does not receive a parent's or legal guardian's consent, as required in subsection (1), before issuing the credit card or similar loan advance access device to a minor may not collect in this state from the minor or the minor's parent or guardian any debt incurred by the minor through the use of the credit card or similar loan advance access device.

History: En. Sec. 1, Ch. 21, L. 1997.

Part 2

Retail Installment Sales

Part Cross-References

U.C.C. — sales, Title 30, ch. 2.

U.C.C. — purchase of chattel paper and instruments, 30-9-308.

Sales, Title 30, ch. 11.

Personal solicitation sales, Title 30, ch. 14, part 5.

Montana Consumer Loan Act, Title 32, ch. 5.

Loans for use, Title 70, ch. 7, part 1.

31-1-201. Short title. This part may be cited as the "Montana Retail Installment Sales Act".

History: **En. Sec. 1, Ch. 282, L. 1959; R.C.M. 1947, 74-601.**

31-1-202. Definitions. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods that, at the time of the sale or subsequently, are to be so affixed to realty as to become a part of the realty, whether or not severable from it.

(e) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers; the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

(g) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting, however, any vehicle which runs only on rails or tracks or in the air.

(h) "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if engaged in purchasing retail installment contracts. The term does not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made for insurance and benefits, and the amounts of the official fees and the finance charge.

(2) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions. However, this part pertains to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

History: En. Sec. 2, Ch. 282, L. 1959; amd. Sec. 1, Ch. 416, L. 1971; amd. Sec. 137, Ch. 431, L. 1975; R.C.M. 1947, 74-602; amd. Sec. 1, Ch. 160, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 13, Ch. 516, L. 1985; amd. Sec. 1, Ch. 297, L. 1987; amd. Sec. 1, Ch. 198, L. 1993.

Cross-References

Fees of Clerk of District Court, 25-1-201.

Contract defined, 28-2-101.

U.C.C. — buyer in ordinary course of business and holder defined, 30-1-201.

U.C.C. — goods defined, 30-2-105.

U.C.C. — sale defined, 30-2-106.

U.C.C. — negotiable instruments — rights of holder, Title 30, ch. 3, part 3.

Motor vehicle defined, 61-1-102.

Motorcycle defined, 61-1-105.

Camper defined, 61-1-129.

Recreational vehicle defined, 61-1-132.

Quadricycle defined, 61-1-133.

31-1-203. Penalties. (1) Any person who knowingly violates a provision of this part or engages in the business of a sales finance company in this state without a license as provided in this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 31-1-231 through 31-1-243, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance, delinquency, or collection charge on the contract.

History: En. Sec. 11, Ch. 282, L. 1959; amd. Sec. 16, Ch. 185, L. 1977; amd. Sec. 3, Ch. 284, L. 1977; R.C.M. 1947, 74-611.

Cross-References

Actions to enforce penalty or forfeiture or other statutory liability, 27-2-211.

Misdemeanor defined, 45-2-101.

31-1-204. Waiver. Any waiver of the provisions of this part shall be unenforceable and void.

History: En. Sec. 12, Ch. 282, L. 1959; R.C.M. 1947, 74-612.

Cross-References

Contracts that violate policy of law — exemption from responsibility, 28-2-702.

31-1-205 through 31-1-210 reserved.

31-1-211. Powers of department. (1) The department may adopt rules necessary to carry out the intent and purposes of this part. All rules of general application must be filed in the office of the department. A copy of every rule must be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt the licensee from the duty of compliance with those rules lawfully adopted under the provisions of this section.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or

supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by it, a judge of the district court of the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

(4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence as required by the subpoena, the department may apply to the judge of the court issuing the subpoena for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that person and, upon that person being brought before the judge, proceed to a hearing of the case. The judge may compel:

(a) obedience to the subpoena;
(b) the answering of any question;
(c) the production of any evidence that may be proper; or
(d) the witness to pay the costs of the proceeding.

(5) Failure to comply with the requirements of subsection (4)(a), (4)(b), or (4)(c) is punishable by a fine not exceeding $100 or by imprisonment in the county jail, or both.

History: En. Sec. 6, Ch. 282, L. 1959; amd. Sec. 140, Ch. 431, L. 1975; amd. Sec. 15, Ch. 185, L. 1977; R.C.M. 1947, 74-606; amd. Sec. 1, Ch. 265, L. 1995.

Cross-References

Oaths, Title 1, ch. 6, part 1.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contempts, Title 3, ch. 1, part 5.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Department of Commerce authority, 30-14-114.

Investigations, 30-14-221.

Banks — examination and supervision by Department of Commerce, 32-1-211.

Reports and accounts prescribed by Department of Commerce, 32-2-302.

Examinations, 32-3-203.

Access to records — witnesses, 32-5-404.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Entry, inspection, and investigation of milk production facilities and records, 81-23-401.

31-1-212. Investigations and complaints. (1) The department may make those investigations it considers necessary, and to the extent necessary for this purpose, it may examine a licensee or any other person and may compel the production of relevant books, records, accounts, and documents.

(2) A retail buyer having reason to believe that this part relating to his retail installment contract has been violated may file with the department a written complaint setting forth the details of the alleged violation, and the department, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and retail seller involved.

History: En. Sec. 5, Ch. 282, L. 1959; amd. Sec. 139, Ch. 431, L. 1975; R.C.M. 1947, 74-605.

Cross-References

Subpoena for production of documentary evidence, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

Consumer protection — Department of Commerce investigations, 30-14-221.

Discrimination in credit transactions, 49-2-403.

31-1-213 through 31-1-220 reserved.

31-1-221. Licensing of sales finance companies required. (1) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this part, except that no bank, trust company, or savings and loan association authorized to do business in this state shall be required to obtain a license under this part but shall comply with all of the other provisions of this part.

(2) The application for such license shall be in writing, under oath, and in the form prescribed by the department. The application shall contain:

(a) the name of the applicant;

(b) date of incorporation, if incorporated;

(c) the address where the business is or is to be conducted and similar information as to any branch office of the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) such other pertinent information as the department may require.

(3) The license fee for each calendar year or part thereof shall be the sum of $100 for each place of business of the licensee in this state.

(4) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the department shall endorse the change of location of the license without charge.

(5) Upon the filing of such application and the payment of said fee, the department shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this part for a period which shall expire December 31 next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this part under any other name.

(6) Fees collected under this chapter shall be deposited in the state special revenue fund for the use of the department in its supervision function.

History: En. Sec. 3, Ch. 282, L. 1959; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 74-603; amd. Sec. 8, Ch. 600, L. 1985.

Cross-References

Fund structure, 17-2-102.

Consumer loan businesses — licensure requirements, Title 32, ch. 5, part 2.

31-1-222. Denial, suspension, or revocation of licenses. (1) Renewal of a license originally granted under 31-1-221 may be denied or a license may be suspended or revoked by the department on the following grounds:

(a) material misstatement of fact in the application for license;

(b) willful failure to comply with any provision of this part relating to retail installment contracts;

(c) defrauding any retail buyer to the buyer's damage;

(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this part.

(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of his employees while acting as his agent, if the licensee after actual

knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

(3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice shall contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license shall recite the grounds upon which it is based. The order shall be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by certified mail to the licensee at his principal place of business.

(c) No revocation, suspension, or surrender of a license impairs or affects the obligation of a lawful retail installment contract acquired previously by the licensee.

History: En. Sec. 4, Ch. 282, L. 1959; amd. Sec. 138, Ch. 431, L. 1975; amd. Sec. 14, Ch. 185, L. 1977; R.C.M. 1947, 74-604.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Contractual provisions relating to fraud, 28-2-404 through 28-2-406.

Principal's responsibility for agent's negligence, omissions, and wrongs, 28-10-602.

Department of Commerce to restrain unlawful acts, 30-14-111.

Consumer loan businesses — revocation and suspension of license, 32-5-207.

Unsworn falsification to authorities, 45-7-203.

31-1-223 through 31-1-230 reserved.

31-1-231. Requirements of retail installment contracts. (1) Each retail installment contract shall be in writing, signed by both the buyer and the seller, and completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where no title, lien, or other security interest is retained or taken by the seller, then the retail installment contract need not be contained in a single document. In such case, if the contract is contained in more than one document, then one such document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time, and in such case such document, together with the sales slip, account book, or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail installment contract for each such purchase.

(2) The printed portion of the contract, other than instructions for completion, shall be in at least 8-point type. The contract shall contain the following notice in a size equal to at least 10-point bold type:

"1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.

2. You are entitled to an exact copy of the contract you sign.

3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(3) If the contract covers the sale of a motor vehicle, it shall also contain, in a size equal to at least 10-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

(4) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the goods sold or services furnished or to be

furnished and shall clearly state and describe any collateral security taken for the buyer's obligation.

(5) The contract shall contain the following items:

(a) the cash sale price of the goods or services;

(b) the amount of the buyer's down payment and whether made in money or goods or partly in money and partly in goods, including a brief description of the goods traded in;

(c) the difference between items (5)(a) and (5)(b);

(d) the amount, if any, included for insurance and other benefits if a separate charge is made therefor, specifying the types of coverage and benefits;

(e) the amount of official fees;

(f) the principal balance which is the sum of items (5)(c) through (5)(e);

(g) the amount of the finance charge;

(h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of items (5)(f) and (5)(g), payable in installments by the buyer to the seller;

(i) the number of installments;

(j) the amount of each installment; and

(k) the due date or period of installments.

(6) The items in subsection (5) need not be stated in the sequence or order set forth, and additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(7) No retail installment contract may be signed by any party thereto when it contains blank spaces to be filled in after it has been signed, except that if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract shall, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract, be conclusive proof:

(a) of such delivery;

(b) that the contract when signed did not contain any blank spaces except as herein provided; and

(c) of compliance with 31-1-231 through 31-1-236.

(8) If a retail installment transaction is subject to the federal Truth in Lending Act (15 U.S.C. 1601-1667e), the seller may, instead of complying with the requirements of subsections (2) through (7), comply with all such requirements of the federal law. A seller who complies with the federal requirements is subject only to the provisions of subsection (1) of this section.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 1, Ch. 88, L. 1979; amd. Sec. 1, Ch. 89, L. 1985.

Cross-References

What contracts must be in writing, 28-2-903.

Consumer loan businesses — installment payment — contract period, 32-5-302.

Borrower to receive copy of contract or statement of contents, 32-5-303.

Motor vehicles — certain financing agreements prohibited, 61-4-403.

31-1-232. Buyer's right of rescission. The seller shall deliver to the buyer or mail to him at his address shown in the contract a copy of the contract, signed by the seller. Until the seller does so, a buyer who has not received delivery of the goods or been furnished the services shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract or, if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

History: **En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).**

Cross-References

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

U.C.C. — sales — manner and effect of rightful rejection, 30-2-602.

31-1-233. Insurance. (1) The amount, if any, included for insurance that may be purchased by the holder of the contract may not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state when the rates are required by law to be approved by the insurance department.

(2) All insurance purchased by the holder of the contract must be written by an insurance company authorized to do business in this state.

(3) A buyer may be required to provide insurance on the goods at the buyer's own cost for the protection of the seller or holder as well as the buyer, but the insurance is limited to insurance against substantial risk of loss, damage, or destruction of the goods.

(4) Any other insurance may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer.

(5) If insurance for which an identified charge is made insures the life, safety, or health of the buyer or the buyer's interest in goods and is purchased by the holder, the holder shall within 30 days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth:

(a) the amount of the premium;

(b) the kind or kinds of insurance;

(c) the coverages; and

(d) if a policy, all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance or, if a certificate, a summary of the terms, exceptions, limitations, restrictions, and conditions.

(6) The holder may not decline existing insurance written by an insurance company authorized to do business in this state, and the buyer has the privilege of purchasing insurance from an insurance producer or broker of the buyer's own selection and of selecting the buyer's insurance company if:

(a) the insurance company is acceptable to the holder, which acceptance may not be unreasonably or arbitrarily withheld; and

(b) the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects the buyer's insurance producer, broker, or company is optional with the holder.

(7) If any insurance is canceled or the premium adjusted, any refund of the insurance premium received by the holder must be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them.

History: **En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 34, Ch. 16, L. 1991; amd. Sec. 9, Ch. 472, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 472 in (2) at end deleted "and must be countersigned by a duly licensed resident insurance producer authorized to engage in the insurance business in this state"; in (6) at beginning of introductory clause after "The" substituted "holder" for "seller"; in (6)(b) at end substituted "holder" for "seller"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

U.C.C. — sales — insurable interest in goods — manner of identification of goods, 30-2-501.

U.C.C. — secured transactions — accounts, contract rights, general intangibles, and equipment relating to another jurisdiction — incoming goods already subject to security interest, 30-9-103.

Consumer loan businesses — insurance, 32-5-306.

Insurance — compliance with Code required, 33-1-102.

Commissioner of Insurance — general powers and duties, 33-1-311.

31-1-234. Transfer of equity — fee. A buyer may transfer his equity in the goods at any time to another person upon agreement by the holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed $50.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 1, Ch. 434, L. 1983.

Cross-References

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Assignment of nonnegotiable written contract, 28-2-206.

U.C.C. — sales — delegation of performance — assignment of rights, 30-2-210.

31-1-235. Delinquency fee. The holder of a retail installment contract or a retail charge account agreement may collect a delinquency charge on each installment in default for a period not less than 10 days in an amount not to exceed $10 or, in lieu of the charge, interest after maturity on each installment not exceeding the highest lawful contract rate. In addition to a delinquency charge, the contract may provide for the payment of attorney fees not exceeding 15% of the amount due and payable under the contract when the contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with the delinquency.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 2, Ch. 198, L. 1993; amd. Sec. 1, Ch. 266, L. 1997.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorney fees, Title 25, ch. 10, part 3.

Contractual right to attorney fees treated as reciprocal, 28-3-704.

Consumer loan businesses — deferral charge permitted — nature of deferral charge, 32-5-321.

31-1-236. Notice and receipt of payment. (1) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(2) After payment of all sums for which the buyer is obligated under a contract and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at his last known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

Cross-References

U.C.C. — secured transactions — termination statement, 30-9-404.

Consumer loan businesses — receipts — return of note, 32-5-304.

31-1-237 through 31-1-240 reserved.

31-1-241. Finance charge limitation. (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract must be at a rate agreed upon by the retail seller and the buyer.

(2) Notwithstanding the provisions of any other law, the finance charge included in a retail charge account agreement must be at a rate agreed upon by the retail seller and the buyer.

(3) The finance charge must be computed from month to month (which need not be a calendar month) or over another regular billing cycle period by using either:

(a) the average daily balance in the account in the billing cycle period; or

(b) the ending balance of the account as of the last day of the billing cycle period less the amount of total purchases charged to the account during that billing cycle.

(4) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the billing cycle prior to the effective date of the change.

(5) If the retail seller increases the finance charge on a retail charge account agreement, then the increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(6) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

(7) If the finance charge determined pursuant to subsection (3) for a monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged and collected for the period.

History: En. Sec. 8, Ch. 282, L. 1959; amd. Sec. 11-152, Ch. 264, L. 1963; amd. Sec. 2, Ch. 416, L. 1971; amd. Sec. 1, Ch. 252, L. 1975; amd. Sec. 1, Ch. 284, L. 1977; R.C.M. 1947, 74-608; amd. Sec. 2, Ch. 160, L. 1979; amd. Secs. 1, 2, Ch. 276, L. 1981; amd. Secs. 1, 3, Ch. 22, L. 1983; amd. Sec. 2, Ch. 297, L. 1987; amd. Sec. 1, Ch. 267, L. 1997.

Cross-References

Interest defined, 31-1-104.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Limitation of Rule of 78ths, 31-1-113.

Consumer loan businesses — charges, refunds, penalties, and filing fees, 32-5-301.

31-1-242. Refunds on prepayment. (1) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments.

(2) In a contract where the period of the contract does not exceed 61 months, the amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning 1 month after prepayment is made bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than $1, no refund need be made.

(3) In any contract where the period of the contract exceeds 61 months, the amount of such refund is the portion of the original finance charge that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose, the applicable

charge is the charge that would have been earned for that period if the contract were not precomputed, by applying to the unpaid principal balance, according to the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled.

History: **En. Sec. 9, Ch. 282, L. 1959; R.C.M. 1947, 74-609; amd. Sec. 1, Ch. 135, L. 1983.**

Cross-References

Consumer loan businesses — charges, refunds, penalties, and filing fees, 32-5-301.

31-1-243. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of such contract, the amount of the installments, and the time schedule therefor and may collect for such extension, deferment, renewal, or restatement a refinance charge. The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to 31-1-242 at the rate of the finance charge specified in 31-1-241. If all unpaid installments are deferred for not more than 2 months, the holder may at his election charge and collect for such deferment an amount equal to the difference between the refund required for prepayment in full under 31-1-242 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to said date, times the number of months in which no scheduled payment is made.

History: **En. Sec. 10, Ch. 282, L. 1959; amd. Sec. 2, Ch. 284, L. 1977; R.C.M. 1947, 74-610; amd. Sec. 2, Ch. 88, L. 1979; amd. Sec. 3, Ch. 276, L. 1981; amd. Sec. 1, Ch. 22, L. 1983.**

Cross-References

When interest becomes part of principal, 31-1-109.

Consumer loan businesses — deferral charge permitted — nature of deferral charge, 32-5-321.

Consumer loan businesses — deferral charge — rate, 32-5-322.

Part 3

Wage Brokers

31-1-301. Wage brokers to procure license and give bond. No person, company, corporation, or association may establish or conduct the business of wage broker within the state unless such person, company, corporation, or association procures a license from the proper authorities and executes a bond in such sum as the authorities may require for the faithful carrying out of the provisions of this part and of the ordinances of any town or city in which the business may be carried on.

History: **En. Sec. 1, Ch. 56, L. 1911; re-en. Sec. 4173, R.C.M. 1921; re-en. Sec. 4173, R.C.M. 1935; R.C.M. 1947, 41-1501; amd. Sec. 3, Ch. 88, L. 1979.**

31-1-302. Issuance of license — terms and amount thereof. The board of county commissioners of any county in this state or, in case said business be carried on in any incorporated city or town, the city council or board of trustees of said city or town may in its discretion, from time to time, grant licenses to any person or persons, company, corporation, or association to conduct or carry on the business of wage broker upon payment of such sum therefor and upon such terms and conditions as the said board of county commissioners or city council or board of trustees shall by resolution or ordinance require.

History: **En. Sec. 2, Ch. 56, L. 1911; re-en. Sec. 4174, R.C.M. 1921; re-en. Sec. 4174, R.C.M. 1935; R.C.M. 1947, 41-1502.**

Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

General licensing authority of municipalities, 7-21-4101.

Licensing — discrimination prohibited, 49-3-204.

31-1-303. Wage broker defined. Any person, company, corporation, or association parting with, giving, or loaning money, either directly or indirectly, to any employee or wage earner, upon the security of or in consideration of any assignment or transfer of wages or salary of such employee or wage earner, shall be deemed to be a wage broker within the meaning of this part.

History: **En. Sec. 3, Ch. 56, L. 1911; re-en. Sec. 4175, R.C.M. 1921; re-en. Sec. 4175, R.C.M. 1935; R.C.M. 1947, 41-1503.**

31-1-304. Restrictions upon assignment of wages or salary. No assignment of his or her wages or salary by any employee or wage earner to any wage broker for his or her benefit shall be valid or enforceable, nor shall any employer or debtor recognize or honor such assignment for any purpose whatever, unless it be for a fixed and definite part or all of the wages or salary theretofore earned.

History: **En. Sec. 4, Ch. 56, L. 1911; re-en. Sec. 4176, R.C.M. 1921; re-en. Sec. 4176, R.C.M. 1935; R.C.M. 1947, 41-1504.**

Cross-References

Consumer loan businesses — wage assignments — limitations, 32-5-310.

31-1-305. Interest on loans — amount and computation. No wage broker shall ask, demand, or receive, either as compensation or interest or in any other manner, directly or indirectly, any compensation or interest for the use of money advanced or loaned by him to any employee or wage earner in excess of 12% per annum. Said compensation or rate of interest shall be computed upon the amount actually advanced to and received by the employee or wage earner and shall include all commissions or compensation whatsoever to the wage broker or any other person for making or procuring said loan.

History: **En. Sec. 5, Ch. 56, L. 1911; re-en. Sec. 4177, R.C.M. 1921; re-en. Sec. 4177, R.C.M. 1935; R.C.M. 1947, 41-1505.**

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consumer loan businesses — charges, refunds, penalties, and filing fees, 32-5-301.

31-1-306. Spouse must join in assignment of wages — acknowledgment. No assignment of wages or salary to a wage broker by a married person who shall have a spouse residing in this state shall be valid or enforceable without the consent of such spouse, evidenced by the spouse's signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments. No wage broker or person connected with a wage broker, directly or indirectly, shall be authorized to take any such acknowledgments.

History: **En. Sec. 6, Ch. 56, L. 1911; re-en. Sec. 4178, R.C.M. 1921; re-en. Sec. 4178, R.C.M. 1935; amd. Sec. 23, Ch. 535, L. 1975; R.C.M. 1947, 41-1506.**

Cross-References

Consumer loan businesses — wage assignments — limitations, 32-5-310.

Earnings and accumulations of married person, 40-2-205.

Work and labor of married person, 40-2-207.

31-1-307. Assignments invalid without notice to employer — filing assignments. No assignment of wages or salary to a wage broker shall be valid or enforceable unless notice in writing of the same, accompanied by a copy of the assignment, shall be given to the employer within 1 day from the date of its execution. All assignments shall be filed in the office of the county clerk of the county where the assignor resides, and no assignment shall be valid unless so filed.

History: En. Sec. 7, Ch. 56, L. 1911; re-en. Sec. 4179, R.C.M. 1921; re-en. Sec. 4179, R.C.M. 1935; R.C.M. 1947, 41-1507.

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.

What contracts must be in writing, 28-2-903.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

31-1-308. Assignment to be considered a loan. Every purchase by a wage broker of an assignment of the wages or salary of any employee or wage earner shall be held and considered a loan, in the sum of the amount actually paid to and received by such employee or wage earner, and shall be subject to all the provisions of this part.

History: En. Sec. 8, Ch. 56, L. 1911; re-en. Sec. 4180, R.C.M. 1921; re-en. Sec. 4180, R.C.M. 1935; R.C.M. 1947, 41-1508.

Cross-References

Loan of money — what constitutes, 31-1-101.

Engaging in business of making loans restricted, 32-5-103.

Consumer loan businesses — wage assignments — limitations, 32-5-310.

31-1-309. Violation — penalties. Any person, company, corporation, or association and any officer, member, agent, or employee thereof violating any or either of the provisions of 31-1-301 to 31-1-308, both inclusive, shall be deemed guilty of a misdemeanor and upon conviction shall be liable to a fine in the sum of not less than $100 or more than $500 for each offense or to imprisonment in the county jail for a period not to exceed 90 days, or both, and in addition thereto the debt and accrued interest thereon shall be discharged and the security shall be void.

History: En. Sec. 9, Ch. 56, L. 1911; re-en. Sec. 4181, R.C.M. 1921; amd. Sec. 1, Ch. 112, L. 1929; re-en. Sec. 4181, R.C.M. 1935; R.C.M. 1947, 41-1509.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

31-1-310. When note, instrument, or assignment void. Any note, bill, or other evidence of indebtedness and any assignment of wages or salary given to or received by any wage broker in violation of any of the provisions of this part shall be void as against the creditors of the assignor or transferor.

History: En. Sec. 10, Ch. 56, L. 1911; re-en. Sec. 4182, R.C.M. 1921; re-en. Sec. 4182, R.C.M. 1935; R.C.M. 1947, 41-1510.

Cross-References

When contract wholly void, 28-2-603.

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

Part 4
Pawnbrokers

Part Cross-References

Regulation of pawnbrokers located outside incorporated city or town — definition, 7-21-2120.

Regulation of pawnbrokers by city government, 7-21-4201, 7-21-4207, 7-21-4208.

Theft by disposal of stolen property, 45-6-314.

Pawnbroker to surrender stolen property — warrant, 46-5-212.

31-1-401. Interest pawnbrokers may receive — civil enforcement. (1) A person may not carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for loans at any rate of interest above 10% a year without first obtaining a license. A pawnbroker or junk dealer or the pawnbroker's or junk dealer's employees or agents may not charge a fee of more than 25% of the amount of the loan for a 30-day period. The fee for extending a pawn agreement for 30 days may not exceed 25% of the amount of the loan. For purposes of this section, a fee includes all costs or fees charged, including but not limited to interest, commission, discount, storage, care of property, and purchase option.

(2) The taking, receiving, reserving, or charging of a fee greater than that allowed under subsection (1) is considered a forfeiture of a sum double the amount of the fee for storage or caring that was agreed to be paid.

(3) (a) When a rate or charge greater than that provided for in subsection (1) has been paid, the person by whom it has been paid may recover from the pawnbroker or junk dealer reasonable attorney fees and an amount double the amount of the fee paid.

(b) An action under this section must be brought within 2 years after the payment of the fee. Before a suit may be brought, the party bringing suit shall make written demand for return of the fee paid.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3310, Pol. C. 1895; Sec. 2105, Rev. C. 1907; re-en. Sec. 4186, R.C.M. 1921; re-en. Sec. 4186, R.C.M. 1935; amd. Sec. 12, Ch. 185, L. 1977; R.C.M. 1947, 66-1601; amd. Sec. 1, Ch. 258, L. 1993.

Cross-References

Regulation of pawnbrokers, 7-21-2120.

Cities may license, 7-21-4201.

Legal interest, 31-1-106.

Engaging in business of making loans restricted, 32-5-103.

Consumer loan businesses — charges, refunds, penalties, and filing fees, 32-5-301.

31-1-402. Pawnbroker to keep register. (1) Every pawnbroker or junk dealer must keep a register, in which must be entered a description of every article pawned to him or purchased by him, with:

(a) the date of the pawning or purchasing;

(b) date when the article must be redeemed;

(c) the name of the person by whom the same was pawned or by whom purchased; and

(d) the amount loaned thereon or paid therefor.

(2) In case of the sale of any article pawned or pledged, the pawnbroker or junk dealer must enter upon said register:

(a) the name of the purchaser;

(b) the time of the sale; and

(c) the price paid therefor.

(3) The register must always be open to inspection and examination of any peace officer or other persons.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3315, Pol. C. 1895; re-en. Sec. 2110, Rev. C. 1907; re-en. Sec. 4191, R.C.M. 1921; re-en. Sec. 4191, R.C.M. 1935; R.C.M. 1947, 66-1606.

Cross-References

Authority to require records for pawn, secondhand, and junk shops, 7-21-4207.

Attachment and enforceability of security interest — proceed — formal requisites, 30-9-203.

Unlawful transactions with children, 45-5-623.

31-1-403 through 31-1-406. Repealed. Sec. 2, Ch. 344, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

31-1-403. En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3311, Pol. C. 1895; re-en. Sec. 2106, Rev. C. 1907; re-en. Sec. 4187, R.C.M. 1921; re-en. Sec. 4187, R.C.M. 1935; amd. Sec. 54, Ch. 359, L. 1977; R.C.M. 1947, 66-1602.

31-1-404. En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3312, Pol. C. 1895; re-en. Sec. 2107, Rev. C. 1907; re-en. Sec. 4188, R.C.M. 1921; re-en. Sec. 4188, R.C.M. 1935; R.C.M. 1947, 66-1603.

31-1-405. En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3313, Pol. C. 1895; re-en. Sec. 2108, Rev. C. 1907; re-en. Sec. 4189, R.C.M. 1921; re-en. Sec. 4189, R.C.M. 1935; R.C.M. 1947, 66-1604.

31-1-406. En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3314, Pol. C. 1895; re-en. Sec. 2109, Rev. C. 1907; re-en. Sec. 4190, R.C.M. 1921; re-en. Sec. 4190, R.C.M. 1935; R.C.M. 1947, 66-1605.

31-1-407. Violation a misdemeanor. A violation of any of the provisions of this part is a misdemeanor.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3316, Pol. C. 1895; re-en. Sec. 2111, Rev. C. 1907; re-en. Sec. 4192, R.C.M. 1921; re-en. Sec. 4192, R.C.M. 1935; amd. Sec. 21, Ch. 513, L. 1973; amd. Sec. 13, Ch. 185, L. 1977; R.C.M. 1947, 66-1607.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Penalty when none specified, 46-18-212.

Part 5

Retail Sales — Late Payment Charges

Part Cross-References

U.C.C. — sales, Title 30, ch. 2.

31-1-501. Late payment charges — accounts receivable for merchandise sold at retail. (1) Notwithstanding 31-1-106 or 31-1-107, a person who sells goods, as defined in 31-1-202, at retail to a retail buyer who promises to pay for such goods upon presentation of the bill therefor, may charge and collect a late payment charge not greater than 1 ½% per month on all money due on all accounts from 30 days after the date on which the obligation of the buyer to pay is incurred.

(2) The late payment charge provided in this section may be charged only if at the time the obligation was incurred the seller did not intend to extend any credit beyond 30 days and any late payment of the obligation was unintended.

(3) The provisions of this section do not apply to money due for intangible services, for services regulated by the public service commission, for real property, for health care services, or for retail installment sales contracts or retail charge account agreements regulated under Title 31, chapter 1, part 2.

History: En. Sec. 1, Ch. 222, L. 1981.

31-1-502. Periodic statement to be furnished to debtor. (1) A seller may charge the late payment charge provided for in 31-1-501 only if he promptly supplies the buyer with a statement as of the end of each monthly period, or other regular period agreed upon by the seller and the buyer, in which there is any unpaid balance. Such statement shall recite the following:

(a) the percentage amount of the late payment charge that will be charged beginning 30 days after the obligation is incurred;

(b) the unpaid balance at the beginning or end of the period;

(c) an identification of any amounts debited to the buyer's account during the period;

(d) the payments made by the buyer to the seller during the period;

(e) the amount of the late payment charge and also the percentage annual simple interest equivalent of such amount; and

(f) a legend to the effect that the buyer may at any time pay the total unpaid balance.

(2) The items need not be stated in the sequence or order set forth in subsection (1). Additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

History: **En. Sec. 2, Ch. 222, L. 1981.**

Part 6

State-Sponsored Credit Card (Repealed. Sec. 2, Ch. 252, L. 1995)

Part Compiler's Comments

Histories of Repealed Sections:

31-1-601. En. Sec. 1(4), Ch. 637, L. 1989.

31-1-602. En. Sec. 1(1), (2), Ch. 637, L. 1989; amd. Sec. 9, Ch. 593, L. 1993.

31-1-603. En. Sec. 1(3), Ch. 637, L. 1989.

Part 7

Montana Deferred Deposit Loan Act

Part Compiler's Comments

Effective Date: This part is effective October 1, 1999.

31-1-701. Short title. This part may be cited as the "Montana Deferred Deposit Loan Act".

History: **En. Sec. 1, Ch. 404, L. 1999.**

31-1-702. Purpose — rules. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

History: **En. Sec. 2, Ch. 404, L. 1999.**

31-1-703. Definitions. For the purposes of this part, the following definitions apply:

(1) "Check" means a negotiable instrument, as defined in 30-3-104, that is drawn on a bank and is payable on demand at the maturity of a deferred deposit loan.

(2) "Consumer" means a natural person who, singly or jointly with another natural person, enters into a deferred deposit loan.

(3) "Deferred deposit lender" or "licensee" means a person engaged in the business of making deferred deposit loans.

(4) "Deferred deposit loan" means an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:

(a) a person accepts a check dated on the date the check is written and agrees to hold the check for a period of days prior to deposit or presentment; or

(b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check.

(5) "Department" means the department of commerce.

(6) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other entity.

History: En. Sec. 3, Ch. 404, L. 1999.

31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

(a) banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions; or

(b) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than $2 per check for the service.

History: En. Sec. 4, Ch. 404, L. 1999.

31-1-705. License — business locations —rules. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department.

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of $375.

(3) The department may not issue or renew a license unless findings are made that:

(a) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(b) the applicant has unencumbered assets of at least $25,000 for each location;

(c) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and

(d) other information that the department considers necessary has been provided.

(4) A license may not be issued for longer than 1 year, and a renewal of a license may not be provided if the licensee has violated a provision of this part.

(5) Each licensee shall post a bond in the amount of $10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license.

History: En. Sec. 5, Ch. 404, L. 1999.

31-1-706 through 31-1-710 reserved.

31-1-711. Annual examinations — fee. (1) The department shall conduct annually an examination of each licensee's deferred deposit lending operation to ensure that the licensee is in compliance with the provisions of this part.

(2) A licensee shall pay the department a fee in the amount of $300 a day for each examiner required to conduct an annual examination.

(3) A licensee shall make available to a department examiner the information required under 31-1-714 or as required by rule.

(4) Completion of an annual examination must, in the absence of the department's finding just cause to revoke or suspend a license, constitute grounds for license renewal.

History: **En. Sec. 6, Ch. 404, L. 1999.**

31-1-712. License revocation. (1) If the department finds, after due notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that a licensee or an officer, agent, employee, or representative of the licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, the department may issue an order revoking or suspending the right of the licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

History: **En. Sec. 7, Ch. 404, L. 1999.**

31-1-713. Complaint procedure. The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this part. The department may hold hearings upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or suspend or revoke a license granted under this part.

History: **En. Sec. 8, Ch. 404, L. 1999.**

31-1-714. Information and annual reports. (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 4 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each consumer loan with documentation maintained in the consumer's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year;

(d) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

(e) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

(f) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar amount of checks charged off during the year ending as of December 31 of the previous year; and

(g) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure documents described in 31-1-721 with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department.

History: En. Sec. 9, Ch. 404, L. 1999.

31-1-715. Loan requirements. (1) Each deferred deposit loan may not have a term that exceeds 31 days.

(2) The amount of the deferred deposit loan, exclusive of the fee allowed in 31-1-722(2), may not exceed $300.

(3) The minimum amount of a deferred deposit loan is $50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in 31-1-721 upon consummation of the loan.

(6) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.

History: En. Sec. 10, Ch. 404, L. 1999.

31-1-716 through 31-1-720 reserved.

31-1-721. Required disclosures — loan agreement. (1) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred deposit loan transaction;

(b) includes a telephone number to the department's office that handles concerns or complaints by consumers; and

(c) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information.

(2) Licensees shall provide consumers with a written agreement on a form specified or approved by the department that can be kept by the consumer, which must include the following information:

(a) the name, address, and phone number of the licensee making the deferred deposit loan and the initials or other written means of identifying the individual employee who signs the agreement on behalf of the licensee;

(b) an itemization of the fees and interest charges to be paid by the consumer;

(c) a clear description of the consumer's payment obligations under the loan; and

(d) in a manner that is more conspicuous than the other information provided in the loan document and that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal court for collection of this loan". The statement must be located immediately preceding the signature of the consumer.

History: En. Sec. 11, Ch. 404, L. 1999.

31-1-722. Prohibited and permitted fees — attorney fees and costs. (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the face amount of the check against which the delayed deposit loan is advanced.

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed $15. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.

(4) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part.

History: En. Sec. 12, Ch. 404, L. 1999.

31-1-723. Prohibited acts. A licensee making deferred deposit loans may not commit, or have committed on behalf of the licensee, any of the following prohibited acts:

(1) engaging in the business of deferred deposit lending unless the department has first issued a valid license;

(2) threatening to use or using a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

(3) altering the date or any other information on a check received from a consumer;

(4) using any device or agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part, including but not limited to entering into a different type of transaction or renewing or rolling over a loan with the consumer;

(5) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan;

(6) entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer's monthly net income.

(7) charging to cash a check representing the proceeds of the deferred deposit loan;

(8) using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law;

(9) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate;

(10) making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the fee allowed in 31-1-722(2), exceeds a total of $300 when combining the face amount of the checks written in connection with each loan. Regardless of the total of the loans, a licensee may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee.

(11) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made to the same consumer. However, a licensee may without charge extend the term of the loan beyond the due date.

(12) accepting any collateral for a deferred deposit loan;

(13) charging any interest, fees, or charges other than those specifically authorized by this part, including but not limited to charges for insurance;

(14) threatening to take any action against a consumer that is prohibited by this part or making any misleading or deceptive statements regarding the deferred deposit loan;

(15) making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;

(16) including any of the following provisions in the loan agreement required by 31-1-721:

(a) a hold harmless clause;

(b) a confession of judgment clause;

(c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;

(d) a mandatory arbitration clause;

(e) any assignment of or order for payment of wages or other compensation for services;

(f) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(g) a waiver of any provision of this part.

History: En. Sec. 13, Ch. 404, L. 1999.

31-1-724. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any violation of this part constitutes an unfair or deceptive trade practice.

(3) Any person found to have violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of $1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part.

History: En. Sec. 14, Ch. 404, L. 1999.

31-1-725. Criminal penalties. Any person, including a member, officer, or director of a deferred deposit lender who knowingly violates this part is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding $1,000 or imprisonment not exceeding 6 months, or both.

History: En. Sec. 15, Ch. 404, L. 1999.

CHAPTER 2

DEBTOR AND CREDITOR RELATIONSHIPS

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Chapter Cross-References

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Compromise of debt without seal valid, 1-4-207.

State debt collection service, Title 17, ch. 4, part 1.

Teachers' retirement compensation exempt from taxation and legal process, 19-20-706.

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Proceedings against joint debtors, Title 25, ch. 15, part 1.

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Homestead exemption — execution, Title 70, ch. 32, part 2.

Foreclosure of mortgage, 71-1-222 through 71-1-235.

Debtor's misrepresentation of value of pledge, 71-2-110.

Effect of lien on rights of creditor, 71-3-111.

Creditor and purchaser not included in term "distributee" under Uniform Probate Code, 72-1-103.

Creditors' claims against estate, Title 72, ch. 3, part 8.

Part 1
General Provisions — Definitions

31-2-101. Debtor defined. A debtor is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

History: En. Sec. 4480, Civ. C. 1895; re-en. Sec. 6122, Rev. C. 1907; re-en. Sec. 8598, R.C.M. 1921; Cal. Civ. C. Sec. 3429; Field Civ. C. Sec. 1913; re-en. Sec. 8598, R.C.M. 1935; R.C.M. 1947, 18-101.

Cross-References

Proceedings in aid of execution against debtor, Title 25, ch. 14.

Liability of joint debtors, Title 25, ch. 15.

Right to contribution from joint debtors, 28-1-303.

Performance by one of several joint debtors, 28-1-1102.

Release of debtor by creditor, Title 28, ch. 1, part 16.

U.C.C. — secured transactions — debtor defined, 30-9-105.

Irrigation district — refusal of water to debtor, 85-7-1902.

31-2-102. Creditor defined. A creditor is one in whose favor an obligation exists, by reason of which he is or may become entitled to the payment of money.

History: En. Sec. 4481, Civ. C. 1895; re-en. Sec. 6123, Rev. C. 1907; re-en. Sec. 8599, R.C.M. 1921; Cal. Civ. C. Sec. 3430; Field Civ. C. Sec. 1914; re-en. Sec. 8599, R.C.M. 1935; R.C.M. 1947, 18-102.

Cross-References

Performance to one of several joint creditors, 28-1-1103.

Extinction when directions of creditor followed, 28-1-1104.

Release of debtor by creditor, Title 28, ch. 1, part 16.

U.C.C. — creditor defined, 30-1-201.

31-2-103. Contracts of debtor are valid. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

History: En. Sec. 4482, Civ. C. 1895; re-en. Sec. 6124, Rev. C. 1907; re-en. Sec. 8600, R.C.M. 1921; Cal. Civ. C. Sec. 3431; Field Civ. C. Sec. 1915; re-en. Sec. 8600, R.C.M. 1935; R.C.M. 1947, 18-103.

Cross-References

Who may contract, 28-2-201.

Kinds of contract fraud, 28-2-404 through 28-2-406.

Liens, Title 71, ch. 3.

31-2-104. Payments in preference. A debtor may pay one creditor in preference to another or may give to one creditor security for the payment of his demand in preference to another.

History: En. Sec. 4483, Civ. C. 1895; re-en. Sec. 6125, Rev. C. 1907; re-en. Sec. 8601, R.C.M. 1921; Cal. Civ. C. Sec. 3432; Field Civ. C. Sec. 1916; re-en. Sec. 8601, R.C.M. 1935; R.C.M. 1947, 18-104.

Cross-References

Performance to one of several joint creditors, 28-1-1103.

Extinction when directions of creditor followed, 28-1-1104.

U.C.C. — security interest defined, 30-1-201.

U.C.C. — priority of security interests, Title 30, ch. 9, part 3.

Preference given for wages, 31-2-205.

Preference to be absolute, 31-2-206.

Certain rights not affected by preferences in assignment, 31-2-207.

31-2-105. Relative rights of different creditors. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim and another person has an interest in or is entitled as a creditor to resort to some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction and without doing injustice to third persons.

History: **En. Sec. 4484, Civ. C. 1895; re-en. Sec. 6126, Rev. C. 1907; re-en. Sec. 8602, R.C.M. 1921; Cal. Civ. C. Sec. 3433; Field Civ. C. Sec. 1917; re-en. Sec. 8602, R.C.M. 1935; R.C.M. 1947, 18-105.**

Cross-References

Performance to one of several joint creditors, 28-1-1103.

U.C.C. — rights of third parties — perfected and unperfected security interests — rules of priority, Title 30, ch. 9, part 3.

31-2-106. Exempt property — bankruptcy proceeding. An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-2-1004, 19-18-612, 19-19-504, 19-20-706, 19-21-212, Title 25, chapter 13, part 6, 33-7-522, 33-15-512 through 33-15-514, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

(2) the individual's right to receive unemployment compensation and unemployment benefits; and

(3) the individual's right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy which exceeds 15% of the individual's gross income for that 1-year period, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;

(b) the benefit is paid on account of age or length of service; and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409).

History: **En. Sec. 1, Ch. 161, L. 1981; amd. Sec. 1, Ch. 208, L. 1987; amd. Sec. 1, Ch. 45, L. 1989; amd. Sec. 1, Ch. 301, L. 1989; amd. Sec. 39, Ch. 586, L. 1991; amd. Sec. 59, Ch. 238, L. 1993; amd. Sec. 234, Ch. 265, L. 1993.**

Part 2

Assignments for Benefit of Creditors

Part Cross-References

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Transfer in trust for benefit of creditors to be recorded, 70-21-202.

31-2-201. When debtor may execute assignment. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees in trust for the satisfaction of his creditors, in conformity to the provisions of this part, subject, however, to the provisions of this code relative to trusts and fraudulent transfers and to the restrictions imposed by law upon assignments by special partnerships, corporations, or other specific classes or persons.

History: **En. Sec. 4510, Civ. C. 1895; re-en. Sec. 6136, Rev. C. 1907; re-en. Sec. 8612, R.C.M. 1921; Cal. Civ. C. Sec. 3449; Field Civ. C. Sec. 1924; re-en. Sec. 8612, R.C.M. 1935; R.C.M. 1947, 18-301.**

Cross-References

Trust Code, Title 72, ch. 33 through 36.

31-2-202. Insolvency — what constitutes. A debtor is insolvent, within the meaning of this part, when he is unable to pay his debts from his own means as they become due.

History: En. Sec. 4511, Civ. C. 1895; re-en. Sec. 6137, Rev. C. 1907; re-en. Sec. 8613, R.C.M. 1921; Cal. Civ. C. Sec. 3450; Field Civ. C. Sec. 1925; re-en. Sec. 8613, R.C.M. 1935; R.C.M. 1947, 18-302.

Cross-References

U.C.C. — insolvent defined, 30-1-201.

31-2-203. Certain transfers not affected. The provisions of this part do not prevent a person residing in another state or country from making there, in good faith and without intent to evade the laws of this state, a transfer of property situated within it; nor do they affect the power of a person, although insolvent and within this state, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to such creditor, whether in his own right or otherwise.

History: En. Sec. 4512, Civ. C. 1895; re-en. Sec. 6138, Rev. C. 1907; re-en. Sec. 8614, R.C.M. 1921; Cal. Civ. C. Sec. 3451; Field Civ. C. Sec. 1926; re-en. Sec. 8614, R.C.M. 1935; R.C.M. 1947, 18-303.

Cross-References

U.C.C. — perfection of multiple-state secured transactions, 30-9-103.

31-2-204. What debts may be secured. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

History: En. Sec. 4513, Civ. C. 1895; re-en. Sec. 6139, Rev. C. 1907; re-en. Sec. 8615, R.C.M. 1921; Cal. Civ. C. Sec. 3452; Field Civ. C. Sec. 1927; re-en. Sec. 8615, R.C.M. 1935; R.C.M. 1947, 18-304.

Cross-References

U.C.C. — secured transactions — policy and scope of chapter, 30-9-102.

U.C.C. — security interests arising under chapter on sales or under chapter on leases, 30-9-113.

31-2-205. Preference given for wages. In all assignments of property made by any person, association, partnership, chartered company, or corporation to trustees or assignees on account of inability of the assignor at the time of the assignment to pay his debts or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such assignor for services rendered within 4 months immediately previous to such assignment, not to exceed the actual amount owed for each person, are preferred claims and must be paid by such trustees or assignees before any other creditor of such assignor.

History: En. Sec. 2050, 5th Div. Comp. Stat. 1887; re-en. Sec. 4514, Civ. C. 1895; re-en. Sec. 6140, Rev. C. 1907; re-en. Sec. 8616, R.C.M. 1921; re-en. Sec. 8616, R.C.M. 1935; amd. Sec. 6, Ch. 109, L. 1943; R.C.M 1947, 18-305.

Cross-References

Payments in preference, 31-2-104.

Priority when assignment of property made, 71-3-301.

31-2-206. Preference to be absolute. A preference in an assignment for the benefit of creditors can only be given absolutely and without reserving any power of revocation.

History: En. Sec. 4515, Civ. C. 1895; re-en. Sec. 6141, Rev. C. 1907; re-en. Sec. 8617, R.C.M. 1921; Field Civ. C. Sec. 1929; re-en. Sec. 8617, R.C.M. 1935; R.C.M. 1947, 18-306.

Cross-References

Payments in preference, 31-2-104.

31-2-207. Certain rights not affected by preferences in assignment. No provision in an assignment giving a preference to a creditor can affect or impair any right of another creditor to priority of payment, whether created by law or arising from an obligation or transaction of the parties.

History: En. Sec. 4516, Civ. C. 1895; re-en. Sec. 6142, Rev. C. 1907; re-en. Sec. 8618, R.C.M. 1921; Field Civ. C. Sec. 1930; re-en. Sec. 8618, R.C.M. 1935; R.C.M. 1947, 18-307.

Cross-References

Payments in preference, 31-2-104.

Priority when assignment of property made, 71-3-301.

31-2-208. Joint and separate debts. Joint or joint and several debtors can prefer their joint creditors only out of joint property and can prefer the individual creditors of each only out of the separate property of each.

History: En. Sec. 4517, Civ. C. 1895; re-en. Sec. 6143, Rev. C. 1907; re-en. Sec. 8619, R.C.M. 1921; Field Civ. C. Sec. 1931; re-en. Sec. 8619, R.C.M. 1935; R.C.M. 1947, 18-308.

Cross-References

Liability of joint debtors, Title 25, ch. 15.

Joint obligations, Title 28, ch. 1, part 3.

31-2-209. Assignment — when void. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

(3) if it provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

(5) if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if it exempts him from liability for neglect of duty or misconduct;

(7) if it violates 72-34-105.

History: En. Sec. 4518, Civ. C. 1895; re-en. Sec. 6144, Rev. C. 1907; re-en. Sec. 8620, R.C.M. 1921; Cal. Civ. C. Sec. 3457; Based on Field Civ. C. Sec. 1932; re-en. Sec. 8620, R.C.M. 1935; R.C.M. 1947, 18-309; amd. Sec. 217, Ch. 685, L. 1989.

Cross-References

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Contracts that violate policy of law — exemption from responsibility, 28-2-702.

31-2-210. The instrument of assignment. (1) An assignment for the benefit of creditors must be in writing and subscribed by the assignor or by his agent thereto authorized by writing.

(2) It must be acknowledged or proved and certified in the mode prescribed by the law on recording transfers of real property and recorded as required by 31-2-215 and 31-2-216, but recording in one county constitutes a compliance with the last-mentioned sections.

(3) The assignment must be accompanied by the affidavit of the assignor and assignee that such assignment is made in good faith, for the benefit of the creditors of the assignor, and without any design to hinder, delay, or defraud such creditors.

(4) The assent of the assignee, subscribed and acknowledged by him, must appear in writing embraced in or at the end of or endorsed upon the assignment

before the same is recorded and, if separate from the assignment, must be duly acknowledged.

History: **En. Sec. 4519, Civ. C. 1895; re-en. Sec. 6145, Rev. C. 1907; re-en. Sec. 8621, R.C.M. 1921; Cal. Civ. C. Sec. 3458; Based on Field Civ. C. Sec. 1933; re-en. Sec. 8621, R.C.M. 1935; R.C.M. 1947, 18-310.**

Cross-References

Real property acknowledgment of transfer, 3-1-404.

Certificate of acknowledgment of transfer, 3-1-405.

What contracts must be in writing, 28-2-903.

What acts agent may perform, 28-10-105.

Agency — when written authorization necessary, 28-10-203.

U.C.C. — good faith defined, 30-1-201, 30-2-103.

31-2-211. Compliance necessary to validity of assignment. Unless the provisions of 31-2-210 are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

History: **En. Sec. 4520, Civ. C. 1895; re-en. Sec. 6146, Rev. C. 1907; re-en. Sec. 8622, R.C.M. 1921; Cal. Civ. C. Sec. 3459; Field Civ. C. Sec. 1934; re-en. Sec. 8622, R.C.M. 1935; R.C.M. 1947, 18-311.**

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Contracts — what conditions void, 28-2-707.

31-2-212. Assignee takes subject to rights of third parties. An assignee for the benefit of creditors is not to be regarded as a purchaser for value and has no greater rights than his assignor has in respect to things in action transferred by the assignment.

History: **En. Sec. 4521, Civ. C. 1895; re-en. Sec. 6147, Rev. C. 1907; re-en. Sec. 8623, R.C.M. 1921; Cal. Civ. C. Sec. 3460; Field Civ. C. Sec. 1935; re-en. Sec. 8623, R.C.M. 1935; R.C.M. 1947, 18-312.**

Cross-References

What defenses to action survive assignment of right to action, 27-1-503.

Priorities among conflicting security interests in same collateral, 30-9-312.

Defenses against assignee, 30-9-318.

31-2-213. Inventory required. Within 20 days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by 31-2-215, a full and true inventory showing:

(1) all the creditors of the assignor;

(2) the place of residence of each creditor, if known to the assignor, or if not known, that fact must be stated;

(3) the sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise;

(4) the true consideration of the liability in each case and the place where it arose;

(5) every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;

(6) all property of the assignor at the date of the assignment which is exempt by law from execution; and

(7) all of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt; the encumbrances existing thereon; all vouchers and securities relating thereto; and the value of such property, according to the best knowledge of the assignor.

History: **En. Sec. 4522, Civ. C. 1895; re-en. Sec. 6148, Rev. C. 1907; re-en. Sec. 8624, R.C.M. 1921; Cal. Civ. C. Sec. 3461; Field Civ. C. Sec. 1936; re-en. Sec. 8624, R.C.M. 1935; R.C.M. 1947, 18-313.**

Cross-References

Rules for determining residence, 1-1-215.

Property exempt from execution, Title 25, ch. 13, part 6.

Proceedings to determine availability of property for execution, Title 25, ch. 14, part 1.

Contracts — consideration, Title 28, ch. 2, part 8.

U.C.C. — validity of security agreement and rights of parties to security agreement, Title 30, ch. 9, part 2.

Homestead exemption, Title 70, ch. 32, part 2.

31-2-214. Verification of inventory — when assignee required to file — inspection of assignor's books and papers. (1) An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in 31-2-213, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief.

(2) (a) In case such assignor shall omit, neglect, or refuse to make and deliver such inventory within the 20 days required, the assignee named in such assignment shall, within 30 days after the date thereof, cause to be made and delivered to the judge of the district court of the county where such assignment is recorded such inventory as above required, insofar as he can.

(b) For such purpose, said judge shall, at any time upon the application of such assignee, compel by order such delinquent assignor and any other person to appear before him and disclose, upon oath, any knowledge or information he may possess necessary to the proper making of such inventory.

(c) The assignee shall verify the inventory so made by him to the effect that the same is in all respects just and true to the best of his knowledge and belief.

(3) In case the assignee shall be unable to make and file such inventory within 30 days, the district judge may, upon application upon oath showing such inability, allow him such further time as shall be necessary, not exceeding 60 days.

(4) If the assignee fails to make and file such inventory within said 30 days or such further time as may be allowed, the district judge shall require, by order, the assignee forthwith to appear before him and show cause why he should not be removed. Any person interested in the trust estate may apply for such order and demand such removal.

(5) The books and papers of such delinquent assignor shall at all times be subject to the inspection and examination of any creditor. The district judge is authorized by order to require such debtor or assignee to allow such inspection or examination. Disobedience to such order is a contempt, and obedience to such order may be enforced by attachment.

(6) The inventory shall be filed by said district judge in the office of the clerk of said county in which said assignment is recorded.

History: En. Sec. 4523, Civ. C. 1895; re-en. Sec. 6149, Rev. C. 1907; re-en. Sec. 8625, R.C.M. 1921; Cal. Civ. C. Sec. 3462; re-en. Sec. 8625, R.C.M. 1935; R.C.M. 1947, 18-314.

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Production and inspection of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure to proceedings on assignment, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Affidavits, Title 26, ch. 1, part 10.

31-2-215. Recording assignment and filing inventory. An assignment for the benefit of creditors must be recorded and the inventory required by 31-2-213 filed with the county clerk of the county in which the assignor resided at the date of the assignment or, if he did not then reside in this state, with the clerk of the county in which his principal place of business was then situated or, if he had not then a residence or place of business in this state, with the clerk of the county in which the principal part of the assigned property was then situated.

History: En. Sec. 4524, Civ. C. 1895; re-en. Sec. 6150, Rev. C. 1907; re-en. Sec. 8626, R.C.M. 1921; Cal. Civ. C. Sec. 3463; Based on Field Civ. C. Sec. 1938; re-en. Sec. 8626, R.C.M. 1935; R.C.M. 1947, 18-315.

Cross-References

Rules for determining residence, 1-1-215.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

31-2-216. Recording and filing when more than one assignor. If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded and a copy of the inventory required by 31-2-213 must be filed with the county clerk of the county in which any of the assignors resided at its date or in which any of them not then residing in this state then had a place of business.

History: En. Sec. 4525, Civ. C. 1895; re-en. Sec. 6151, Rev. C. 1907; re-en. Sec. 8627, R.C.M. 1921; Cal. Civ. C. Sec. 3464; Based on Field Civ. C. Sec. 1939; re-en. Sec. 8627, R.C.M. 1935; R.C.M. 1947, 18-316.

Cross-References

Rules for determining residence, 1-1-215.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

31-2-217. Effect of failing to record. An assignment for the benefit of creditors is void against creditors of the assignor and against purchasers and encumbrances in good faith and for value unless it is recorded within 20 days after the date of the assignment.

History: En. Sec. 4526, Civ. C. 1895; re-en. Sec. 6152, Rev. C. 1907; re-en. Sec. 8628, R.C.M. 1921; Cal. Civ. C. Sec. 3465; Based on Field Civ. C. Sec. 1940; re-en. Sec. 8628, R.C.M. 1935; R.C.M. 1947, 18-317.

31-2-218. Assignment of real property. When an assignment for the benefit of creditors embraces real property, it is subject to the provisions of this part, 70-21-102, and Title 70, chapter 21, part 3.

History: En. Sec. 4527, Civ. C. 1895; re-en. Sec. 6153, Rev. C. 1907; re-en. Sec. 8629, R.C.M. 1921; Cal. Civ. C. Sec. 3466; Field Civ. C. Sec. 1941; re-en. Sec. 8629, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1977; R.C.M. 1947, 18-318; amd. Sec. 4, Ch. 88, L. 1979.

31-2-219. Bond of assignees. Within 30 days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the state, for the use and benefit of the creditors, in such amount as may be fixed by a judge of the district court of the county in which the original inventory is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

History: En. Sec. 4528, Civ. C. 1895; re-en. Sec. 6154, Rev. C. 1907; re-en. Sec. 8630, R.C.M. 1921; Cal. Civ. C. Sec. 3467; Based on Field Civ. C. Sec. 1942; re-en. Sec. 8630, R.C.M. 1935; R.C.M. 1947, 18-319.

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Suretyship, Title 28, ch. 11, part 4.

Surety insurance, Title 33, ch. 26, part 1.

31-2-220. Management, disposal, and conversion of estate. (1) Until the inventory and affidavit required by 31-2-213 and 31-2-214 have been made and filed and the assignee has given bond as required by 31-2-219, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

(2) But in case the assignor shall fail to present such inventory within the 20 days required, then the assignee, before the 10 days shall have elapsed, may apply

to said district judge by verified petition for leave to file a provisional bond until such time as he may be able to present the inventory as herein provided.

(3) The district judge shall, in the case provided in 31-2-214, and may also at any time on the petition of one or more creditors showing misconduct or incompetency of the assignee or on petition of the assignee himself, showing sufficient reason therefor, and after due notice of not less than 5 days to the assignor, assignee, surety, and such other persons as such judge may prescribe:

(a) remove or discharge the assignee and appoint one or more in his place;

(b) order an accounting of the assignee so removed or discharged.

(4) The district judge may:

(a) enjoin said assignee from interfering with the assignor's estate and make provision by order for the safe custody of the same; and

(b) enforce obedience to such injunction and orders by attachment.

(5) Upon his discharge, upon his own application, such assignee's bond shall be canceled and discharged.

(6) The new assignee shall give a bond, to be approved as required.

(7) The district judge shall have power by order to:

(a) require or allow any inventory or schedule filed to be corrected or amended;

(b) require and compel, from time to time, supplemental inventories or schedules to be made and filed within such time as he shall prescribe; and

(c) enforce obedience to such orders by attachment.

History: En. Sec. 4529, Civ. C. 1895; re-en. Sec. 6155, Rev. C. 1907; amd. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8631, R.C.M. 1921; Cal. Civ. C. Sec. 3468; re-en. Sec. 8631, R.C.M. 1935; R.C.M. 1947, 18-320.

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Injunctions, Title 27, ch. 19.

Suretyship, Title 28, ch. 11, part 4.

31-2-221. Notice to creditors to present claims. (1) The judge may, upon the petition of the assignee, authorize him to advertise for creditors to present to him their claims, with the vouchers therefor, duly verified, on or before a day to be specified in such advertisement, not less than 10 days from the publication thereof, which advertisement or notice shall be published in one newspaper, to be designated by the judge as most likely to give notice to the persons to be served, at least once and such additional times as the judge may direct. The last publication shall be at least 1 week prior to the date specified.

(2) Said verified claims of creditors shall set forth whether any and, if so, what securities are held for such claims and whether any and, if so, what payments have been made thereon.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8632, R.C.M. 1921; re-en. Sec. 8632, R.C.M. 1935; R.C.M. 1947, 18-321.

Cross-References

Legal notice by publication, Title 18, ch. 7, part 2.

31-2-222. Notices to parties interested in the estate as creditors or otherwise. (1) Parties interested in the estate as creditors or parties otherwise interested, if the judge so directs, shall have at least 10 days' notice by mail to their respective addresses as they appear in the schedule filed by the assignor, or at such other addresses as they shall have filed with the assignee, of:

(a) all proposed sales of property, in bulk;

(b) the filing of the final account of the assignee and of the hearing thereon;

(c) any proposed compromise with creditors.

(2) Such notice may be given as the judge shall direct and must be returnable in court, or before the judge of the court at chambers, in the district.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8633, R.C.M. 1921; re-en. Sec. 8633, R.C.M. 1935; R.C.M. 1947, 18-322.

31-2-223. Duties of assignee. It shall be the duty of the assignee to:

(1) collect and reduce to money the property of the estate and close up the estate as expeditiously as possible;

(2) sell the property of the estate as soon as practicable and sell the accounts and bills receivable when deemed advisable;

(3) furnish such information concerning the estate as may be requested by parties in interest;

(4) keep regular accounts and pay dividends as often as is compatible with the best interests of the estate;

(5) file a final report and account at least 10 days before the hearing thereon.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8634, R.C.M. 1921; re-en. Sec. 8634, R.C.M. 1935; R.C.M. 1947, 18-323.

31-2-224. Power of court. The court shall have power to:

(1) authorize the business of the assignor to be conducted for a limited period by assignee, if necessary in the best interests of the estate, and allow additional compensation for such services;

(2) reopen estates when it appears they were closed before being fully administered and for that purpose to appoint another assignee who will take title to the property not administered;

(3) direct upon the final settlement of the estate that the assignee pay to the lawful creditors their proportionate dividend, notwithstanding their claim has not been presented in accordance with the notice sent out by the assignee, provided that 4 months have not elapsed since the first publication of notice to creditors;

(4) approve the final report and discharge the assignee and his surety from all further liabilities upon matters included in the accounting to creditors appearing and to creditors not having appeared after due citation or not having presented their claims after due advertisement.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8635, R.C.M. 1921; re-en. Sec. 8635, R.C.M. 1935; R.C.M. 1947, 18-324; amd. Sec. 5, Ch. 88, L. 1979.

31-2-225. When further security required. The district judge may, upon his own motion or upon the application of any party in interest and on such notice as he may direct to be given to the assignor, assignee, and surety, require further security to be given whenever, in his judgment, the security afforded by the bond on file is not adequate.

History: En. Sec. 4530, Civ. C. 1895; re-en. Sec. 6156, Rev. C. 1907; re-en. Sec. 8636, R.C.M. 1921; re-en. Sec. 8636, R.C.M. 1935; R.C.M. 1947, 18-325.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

31-2-226. Accounting of assignee. After 6 months from the date of an assignment for the benefit of creditors, the assignee may be required, on petition of any creditor, to make an accounting before the district court of the county where the accompanying inventory was filed.

History: En. Sec. 4531, Civ. C. 1895; re-en. Sec. 6157, Rev. C. 1907; re-en. Sec. 8637, R.C.M. 1921; Cal. Civ. C. Sec. 3469; Based on Field Civ. C. Sec. 1944; re-en. Sec. 8637, R.C.M. 1935; R.C.M. 1947, 18-326; amd. Sec. 6, Ch. 88, L. 1979.

31-2-227. Property exempt. Property exempt from execution and insurance upon the life of the assignor do not pass to the assignee by a general assignment for the benefit of creditors unless the instrument specially mentions them and declares an intention that they should pass thereby.

History: **En. Sec. 4532, Civ. C. 1895; re-en. Sec. 6158, Rev. C. 1907; re-en. Sec. 8638, R.C.M. 1921; Cal. Civ. C. Sec. 3470; Field Civ. C. Sec. 1945; re-en. Sec. 8638, R.C.M. 1935; R.C.M. 1947, 18-327.**

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Life insurance, Title 33, ch. 20.

Homestead exemption, Title 70, ch. 32, part 2.

31-2-228. Compensation. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians, but the assignment cannot grant more and may restrict the commissions to a lesser amount or deny them altogether.

History: **En. Sec. 4533, Civ. C. 1895; re-en. Sec. 6159, Rev. C. 1907; re-en. Sec. 8639, R.C.M. 1921; Cal. Civ. C. Sec. 3471; Field Civ. C. Sec. 1946; re-en. Sec. 8639, R.C.M. 1935; R.C.M. 1947, 18-328.**

Cross-References

Compensation of personal representative, 72-3-631.

Compensation of guardians, 72-5-432.

31-2-229. Assignees protected for acts done in good faith. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith in the execution of the trust, merely for the reason that the assignment is afterwards adjudged void.

History: **En. Sec. 4534, Civ. C. 1895; re-en. Sec. 6160, Rev. C. 1907; re-en. Sec. 8640, R.C.M. 1921; Cal. Civ. C. Sec. 3472; Field Civ. C. Sec. 1947; re-en. Sec. 8640, R.C.M. 1935; R.C.M. 1947, 18-329.**

Cross-References

U.C.C. — good faith defined, 30-1-201, 30-2-103.

U.C.C. — obligation of good faith, 30-1-203.

31-2-230. Assent of creditors necessary to modification of assignment. An assignment for the benefit of creditors which has been executed and recorded so as to transfer the property to the assignee cannot afterwards be canceled or modified by the parties thereto without the consent of every creditor affected thereby.

History: **En. Sec. 4535, Civ. C. 1895; re-en. Sec. 6161, Rev. C. 1907; re-en. Sec. 8641, R.C.M. 1921; Cal. Civ. C. Sec. 3473; Field Civ. C. Sec. 1948; re-en. Sec. 8641, R.C.M. 1935; R.C.M. 1947, 18-330.**

Part 3

Uniform Fraudulent Transfer Act

Part Cross-References

Claim and delivery of personal property, Title 27, ch. 17.

Kinds of contract fraud, 28-2-404 through 28-2-406.

Defrauding creditors, 45-6-315.

Real property — fraudulent conveyances, Title 70, ch. 20, part 4.

31-2-301. Repealed. Sec. 14, Ch. 324, L. 1991.

History: **En. Sec. 1, Ch. 126, L. 1945; R.C.M. 1947, 29-101.**

31-2-302. Repealed. Sec. 14, Ch. 324, L. 1991.

History: **En. Sec. 2, Ch. 126, L. 1945; R.C.M. 1947, 29-102.**

31-2-303. Repealed. Sec. 14, Ch. 324, L. 1991.

History: **En. Sec. 3, Ch. 126, L. 1945; R.C.M. 1947, 29-103.**

31-2-304 through 31-2-310 reserved.

31-2-311 through 31-2-317. Repealed. Sec. 14, Ch. 324, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

31-2-311. En. Sec. 4, Ch. 126, L. 1945; R.C.M. 1947, 29-104.

31-2-312. En. Sec. 5, Ch. 126, L. 1945; R.C.M. 1947, 29-105.

31-2-313. En. Sec. 6, Ch. 126, L. 1945; R.C.M. 1947, 29-106.

31-2-314. En. Sec. 7, Ch. 126, L. 1945; R.C.M. 1947, 29-107.

31-2-315. En. Sec. 4491, Civ. C. 1895; re-en. Sec. 6128, Rev. C. 1907; re-en. Sec. 8604, R.C.M. 1921; Cal. Civ. C. Sec. 3440; Field Civ. C. Sec. 1919; re-en. Sec. 8604, R.C.M. 1935; amd. Sec. 5, Ch. 185, L. 1977; R.C.M. 1947, 29-208.

31-2-316. En. Sec. 4493, Civ. C. 1895; re-en. Sec. 6130, Rev. C. 1907; re-en. Sec. 8606, R.C.M. 1921; Cal. Civ. C. Sec. 3442; Field Civ. C. Sec. 1923; re-en. Sec. 8606, R.C.M. 1935; R.C.M. 1947, 29-210.

31-2-317. En. Sec. 8, Ch. 126, L. 1945; R.C.M. 1947, 29-108.

31-2-318 through 31-2-320 reserved.

31-2-321 through 31-2-325. Repealed. Sec. 14, Ch. 324, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

31-2-321. En. Sec. 9, Ch. 126, L. 1945; R.C.M. 1947, 29-109.

31-2-322. En. Sec. 10, Ch. 126, L. 1945; R.C.M. 1947, 29-110.

31-2-323. En. Sec. 4492, Civ. C. 1895; re-en. Sec. 6129, Rev. C. 1907; re-en. Sec. 8605, R.C.M. 1921; Cal. Civ. C. Sec. 3441; Field Civ. C. Sec. 1922; re-en. Sec. 8605, R.C.M. 1935; R.C.M. 1947, 29-209.

31-2-324. En. Sec. 11, Ch. 126, L. 1945; R.C.M. 1947, 29-111.

31-2-325. En. Sec. 12, Ch. 126, L. 1945; R.C.M. 1947, 29-112.

31-2-326. Short title. This part may be cited as the "Uniform Fraudulent Transfer Act".

History: En. Sec. 1, Ch. 324, L. 1991.

31-2-327. Uniformity of application and construction. This part must be applied and construed to effectuate the general purpose of making uniform the law with respect to the subject of this part among states enacting it.

History: En. Sec. 12, Ch. 324, L. 1991.

31-2-328. Definitions. As used in this part, the following definitions apply:

(1) "Affiliate" means:

(a) a person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt if the person has not exercised the power to vote;

(b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt if the person has not exercised the power to vote;

(c) a person whose business is operated by the debtor under a lease or other agreement or a person substantially all of whose assets are controlled by the debtor; or

(d) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(a) property to the extent it is encumbered by a valid lien;

(b) property to the extent it is generally exempt under nonbankruptcy law; or

(c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(a) if the debtor is an individual:

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner in a partnership described in subsection (7)(a)(ii); or

(iv) a corporation of which the debtor is a director, officer, or person in control;

(b) if the debtor is a corporation:

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in subsection (7)(b)(iv); or

(vi) a relative of a general partner, director, officer, or person in control of the debtor;

(c) if the debtor is a partnership:

(i) a general partner in the debtor;

(ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in subsection (7)(c)(iii); or

(v) a person in control of the debtor;

(d) an affiliate or an insider of an affiliate as if the affiliate were the debtor; and

(e) a managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means:

(a) an individual related by consanguinity within the third degree as determined by the common law;

(b) a spouse or an individual related to a spouse within the third degree as so determined; or

(c) an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in

an asset and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

History: En. Sec. 2, Ch. 324, L. 1991.

31-2-329. Insolvency. (1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's property at a fair valuation and the debtor is generally not paying his debts as they become due.

(2) Property under this section does not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this part.

History: En. Sec. 3, Ch. 324, L. 1991.

31-2-330. Value. (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

History: En. Sec. 4, Ch. 324, L. 1991.

31-2-331 and 31-2-332 reserved.

31-2-333. Transfers fraudulent as to present and future creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under subsection (1)(a), consideration may be given, among other factors, to whether:

(a) the transfer or obligation was to an insider;

(b) the debtor retained possession or control of the property transferred after the transfer;

(c) the transfer or obligation was disclosed or concealed;

(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; or

(k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

History: En. Sec. 5, Ch. 324, L. 1991.

31-2-334. Transfers fraudulent as to present creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

History: En. Sec. 6, Ch. 324, L. 1991.

31-2-335. When transfer made or obligation incurred. For the purposes of this part:

(1) a transfer is made:

(a) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(b) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this part that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not perfected before the commencement of an action for relief under this part, the transfer is considered made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is considered made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred;

(5) an obligation is incurred:

(a) if oral, when it becomes effective between the parties; or

(b) if evidenced in writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

History: En. Sec. 7, Ch. 324, L. 1991.

31-2-336 through 31-2-338 reserved.

31-2-339. Remedies of creditors. (1) In an action for relief against a transfer or obligation under this part, a creditor, subject to the limitations in 31-2-340, may obtain:

(a) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by Title 27, chapter 18; or

(c) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

History: En. Sec. 8, Ch. 324, L. 1991.

31-2-340. Defenses, liability, and protection of transferee. (1) A transfer or obligation is not voidable under 31-2-333(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under 31-2-339(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) the first transferee of the asset or the person for whose benefit the transfer was made; or

(b) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this part, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) a lien on or a right to retain any interest in the asset transferred;

(b) enforcement of any obligation incurred; or

(c) a reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under 31-2-333(1)(b) or 31-2-334 if the transfer results from:

(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) enforcement of a security interest in compliance with Title 30, chapter 9.

(6) A transfer is not voidable under 31-2-334(2):

(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, unless the new value was secured by a valid lien;

(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) if made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

History: **En. Sec. 9, Ch. 324, L. 1991.**

31-2-341. Extinguishment of cause of action. A cause of action with respect to a fraudulent transfer or obligation under this part is extinguished unless action is brought under:

(1) 31-2-333(1)(a) within 2 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) 31-2-333(1)(b) or 31-2-334(1) within 2 years after the transfer was made or the obligation was incurred; or

(3) 31-2-334(2) within 1 year after the transfer was made or the obligation was incurred.

History: **En. Sec. 10, Ch. 324, L. 1991.**

31-2-342. Supplementary provisions. Unless displaced by the provisions of this part, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

History: **En. Sec. 11, Ch. 324, L. 1991.**

CHAPTER 3

RELATED CREDIT PRACTICES

Part 1 — Consumer Reporting Agencies

31-3-101. Purpose.
31-3-102. Definitions and rules of construction.
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31-3-131. Requirements on users of consumer reports.
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Part 2 — Debt Adjusting

31-3-201. Definitions.
31-3-202. Debt adjusting prohibited — penalty.
31-3-203. Exemptions.

Part 1

Consumer Reporting Agencies

Part Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

31-3-101. Purpose. It is the purpose of this part to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this part. A further purpose of this part is to guard an individual's right to privacy guaranteed in Article II, section 10, of the Montana constitution.

History: En. 18-501 by Sec. 1, Ch. 547, L. 1975; R.C.M. 1947, 18-501.

31-3-102. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this part.

(2) The term "consumer" means an individual.

(3) (a) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) other purposes authorized under 31-3-111.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit, directly or indirectly, by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit, directly or indirectly, to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under 31-3-131.

(4) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(5) The term "employment purposes", when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(6) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(7) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(8) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(9) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

History: En. 18-502 by Sec. 2, Ch. 547, L. 1975; R.C.M. 1947, 18-502.

31-3-103. Credit rating — property right. A credit rating is a property right with full constitutional protection.

History: En. 18-503 by Sec. 3, Ch. 547, L. 1975; R.C.M. 1947, 18-503.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

31-3-104 through 31-3-110 reserved.

31-3-111. Permissible purposes of reports. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) in response to the order of a court having jurisdiction to issue such an order;

(2) in accordance with the written instructions of the consumer to whom it relates;

(3) to a person which it has reason to believe:

(a) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

(b) intends to use the information for employment purposes;

(c) intends to use the information in connection with the underwriting of insurance involving the consumer;

(d) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(e) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

History: En. 18-504 by Sec. 4, Ch. 547, L. 1975; R.C.M. 1947, 18-504.

Cross-References

Consumer protection — unlawful practices, 30-14-103.

Retail installment sales, Title 31, ch. 1, part 2.

Consumer loan businesses — Montana Consumer Loan Act, Title 32, ch. 5.

Insurance, Title 33.

Employment relationship, Title 39, ch. 2.

31-3-112. Obsolete information. No consumer reporting agency may make any consumer report containing any of the following items of information:

(1) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than 14 years;

(2) suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

(3) paid tax liens which, from date of payment, antedate the report by more than 7 years;

(4) accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

(5) records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years;

(6) any other adverse item of information which antedates the report by more than 7 years.

History: En. 18-505 by Sec. 5, Ch. 547, L. 1975; R.C.M. 1947, 18-505.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Tax liens and limitations, Title 15, ch. 16, part 4.

31-3-113. Disclosure of investigative consumer reports. (1) A person may not procure or cause to be prepared or distribute an investigative consumer report on any consumer unless:

(a) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made and such disclosure is made in a writing mailed or otherwise delivered to the consumer not later than 3 days after the date on which the report was first requested and includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (2) of this section; or

(b) the report is to be used for employment purposes for which the consumer applied.

(2) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (1)(a), make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested. This disclosure shall be made in a writing mailed or otherwise delivered to the consumer not later than 5 days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the latter.

(3) No person may be held liable for any violation of subsection (1) or (2) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (1) or (2).

History: En. 18-506 by Sec. 6, Ch. 547, L. 1975; R.C.M. 1947, 18-506.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Employment relationship, Title 39, ch. 2.

31-3-114. Compliance procedures. (1) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of 31-3-112 and 31-3-113 and to limit the furnishing of consumer reports to the purposes listed under 31-3-111. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in 31-3-111.

(2) Whenever a consumer reporting agency prepares a consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates, and it shall maintain a record of all persons using the information and the source of each piece of information.

(3) When gathering information, a consumer reporting agency shall notify any person who furnishes information that he is liable to suit if the information is false or furnished with malice or willful intent to injure the consumer.

History: En. 18-507 by Sec. 7, Ch. 547, L. 1975; R.C.M. 1947, 18-507.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

31-3-115. Adverse information. Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report.

History: En. 18-508 by Sec. 8, Ch. 547, L. 1975; R.C.M. 1947, 18-508.

31-3-116 through 31-3-120 reserved.

31-3-121. Disclosures to governmental agencies. Notwithstanding the provisions of 31-3-111, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

History: En. 18-509 by Sec. 9, Ch. 547, L. 1975; R.C.M. 1947, 18-509.

31-3-122. Disclosures to consumers. (1) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(a) the nature and substance of all information (except medical information) in its files on the consumer at the time of the request; and

(b) the sources of the information.

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to July 1, 1975, do not apply to existing consumer reporting agencies except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

History: **En. 18-510 by Sec. 10, Ch. 547, L. 1975; amd. Sec. 3, Ch. 185, L. 1977; R.C.M. 1947, 18-510.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

31-3-123. Conditions of disclosure to consumer. (1) A consumer reporting agency shall make the disclosures required under 31-3-122 during normal business hours and on reasonable notice.

(2) The disclosures required under 31-3-122 shall be made to the consumer:

(a) in person if he appears in person and furnishes proper identification; or

(b) by telephone if he has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(3) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to 31-3-122.

(4) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

History: **En. 18-511 by Sec. 11, Ch. 547, L. 1975; R.C.M. 1947, 18-511.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

31-3-124. Procedure in case of disputed accuracy. (1) If the completeness or accuracy of any item of information contained in this file is disputed by a consumer and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete the information and notify all users, of whom the consumer reporting agency has records, of the information's deletion. The users shall also delete the information.

(2) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.

(3) Whenever a statement of a dispute is filed, unless there are reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof. The consumer reporting agency shall notify the consumer of all users, of whom it has records, who have the disputed information.

History: **En. 18-512 by Sec. 12, Ch. 547, L. 1975; R.C.M. 1947, 18-512.**

31-3-125. Fees for disclosures to consumers. A consumer reporting agency shall make all disclosures pursuant to 31-3-122 and 31-3-124 to the consumer, with appropriate fees to be established by the department of commerce in accordance with the Montana Administrative Procedure Act.

History: **En. 18-513 by Sec. 13, Ch. 547, L. 1975; R.C.M. 1947, 18-513; amd. Sec. 2, Ch. 274, L. 1981.**

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

31-3-126. Public record information for employment purposes. A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up-to-date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up-to-date if the current public record status of the item at the time of the report is reported.

History: En. 18-514 by Sec. 14, Ch. 547, L. 1975; R.C.M. 1947, 18-514.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records management, Title 2, ch. 6, part 2.

31-3-127. Repealed. Sec. 10, Ch. 418, L. 1989.

History: En. Sec. 1, Ch. 543, L. 1985.

31-3-128 through 31-3-130 reserved.

31-3-131. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within 60 days after the consumer learned of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(3) No person may be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (1) and (2).

History: En. 18-515 by Sec. 15, Ch. 547, L. 1975; amd. Sec. 4, Ch. 185, L. 1977; R.C.M. 1947, 18-515.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Consumer protection — unlawful practices, 30-14-103.

31-3-132 through 31-3-140 reserved.

31-3-141. Actions available to consumer. (1) A consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this part.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because the person judges the dispute to be frivolous or irrelevant is liable to suit.

(3) A person, other than the department of public health and human services under 40-5-261, who furnishes information to a consumer reporting agency that is false or a person who furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

(4) A consumer who disputes the result of a reinvestigation conducted under 31-3-124 of the accuracy of information provided by the department of public health and human services may petition for an administrative hearing pursuant to 40-5-261.

History: En. 18-516 by Sec. 16, Ch. 547, L. 1975; R.C.M. 1947, 18-516; amd. Sec. 1, Ch. 418, L. 1989; amd. Sec. 35, Ch. 16, L. 1991; amd. Sec. 82, Ch. 546, L. 1995.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Liability for negligence as well as willful acts, 27-1-701.

Defamation — how effected, 27-1-801.

31-3-142. Civil liability for willful noncompliance. Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this part with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amounts of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

History: En. 18-517 by Sec. 17, Ch. 547, L. 1975; R.C.M. 1947, 18-517.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorney fees, Title 25, ch. 10, part 3.

Damages, Title 27, ch. 1, part 2.

When punitive damages allowed, 27-1-221.

Measure of damages, Title 27, ch. 1, part 3.

31-3-143. Civil liability for negligent noncompliance. Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this part with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

History: En. 18-518 by Sec. 18, Ch. 547, L. 1975; R.C.M. 1947, 18-518.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorney fees, Title 25, ch. 10, part 3.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Liability for negligence as well as willful acts, 27-1-701.

31-3-144 through 31-3-150 reserved.

31-3-151. Jurisdiction — venue. A consumer may bring suit in any district court in Montana, except that disputes concerning information provided under 40-5-261 are subject to administrative and judicial review as provided in 40-5-261.

History: En. 18-519 by Sec. 19, Ch. 547, L. 1975; R.C.M. 1947, 18-519; amd. Sec. 2, Ch. 418, L. 1989.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Venue, Title 25, ch. 2.

31-3-152. Rules. The department of commerce shall enforce this part and promulgate rules necessary to carry out the intent of this part.

History: En. 18-520 by Sec. 20, Ch. 547, L. 1975; R.C.M. 1947, 18-520; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 2, Ch. 543, L. 1985; amd. Sec. 3, Ch. 418, L. 1989.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

31-3-153. Violation. For the purposes of this part, a violation of this law would be in violation of Title 30, chapter 14, part 1.

History: En. 18-521 by Sec. 21, Ch. 547, L. 1975; R.C.M. 1947, 18-521.

Cross-References

Damages, 30-14-133.

Penalties, 30-14-142.

Part 2
Debt Adjusting

31-3-201. Definitions. As used in this part, the following words and terms shall have the following meanings unless the context clearly requires a different meaning:

(1) "Debt adjusting" means the making of a contract, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes debt adjustment, budget counseling, debt management, or debt-pooling service or the holding of oneself out by words of similar import as providing services to debtors in the management of their debts and contracting with the debtor for a fee to:

(a) effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of the debtor; or

(b) receive from the debtor and disperse to his creditors any money or other thing of value.

(2) "Person" means an individual, corporation, partnership, trust, firm, association, or other legal entity.

History: En. Sec. 1, Ch. 300, L. 1969; R.C.M. 1947, 18-401.

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

Consideration, Title 28, ch. 2, part 8.

Wage brokers, Title 31, ch. 1, part 3.

31-3-202. Debt adjusting prohibited — penalty. No person shall engage in the business of debt adjusting. Whoever shall engage in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500 or be imprisoned not more than 6 months, or both.

History: En. Sec. 2, Ch. 300, L. 1969; R.C.M. 1947, 18-402.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

31-3-203. Exemptions. Section 31-3-202 does not apply to:

(1) those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(2) banks and fiduciaries duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) title insurers and abstract companies, while doing an escrow business;

(4) judicial officers or others acting under court orders;

(5) nonprofit or charitable corporations or associations engaged in debt adjusting;

(6) those situations involving debt adjusting incurred incidentally in connection with the lawful practice of a certified public accountant;

(7) bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(8) employers for their employees;

(9) any person (other than a collection agency):

(a) who provides a bond in the amount of $10,000 to the department of commerce under which the person is the obligor and the bond is conditioned that the obligor shall apply all funds received and discharge all obligations for which the obligor has contracted; and

(b) whose maximum fees do not exceed:

(i) a processing and documentation fee of $75; and

(ii) for debt adjusting as defined in 31-3-201, 15% of the total amounts that are owed by the debtor and that are reduced in equal monthly portions over the life of a contract;

(10) any person who, at the request of a debtor, arranges for or makes a loan to the debtor and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting the debts.

History: En. Sec. 3, Ch. 300, L. 1969; amd. Sec. 2, Ch. 185, L. 1977; R.C.M. 1947, 18-403; amd. Sec. 1, Ch. 295, L. 1989.

TITLE 32

FINANCIAL INSTITUTIONS

Ch.
1. Banks and Trust Companies.
2. Building and Loan Associations.
3. Credit Unions.
4. Development Corporation Act.
5. Consumer Loan Businesses.
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CHAPTER 1

BANKS AND TRUST COMPANIES

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Chapter Cross-References

Requirements of bank acting as depository for consolidated city and county government, 7-3-1316 through 7-3-1320.

Requirements of bank acting as depository for counties, cities, or towns, 7-6-201 through 7-6-208.

Special proceedings involving banks not subject to Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20); 32-1-516; 32-1-532; 32-1-538.

Actions against banks — limitations, 27-2-213.

Insurance premium finance companies, Title 33, ch. 14.

Part 1

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Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

32-1-101. Short title — application — purpose. (1) Parts 1 through 5 of this chapter may be known as the "Bank Act".

(2) The Bank Act is applicable to:

(a) all corporations and persons specified in 32-1-102;

(b) corporations that subject themselves to the Bank Act;

(c) persons, partnerships, or corporations who by violating the Bank Act become subject to the penalties provided in the Bank Act; and

(d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign Capital Depository Act, chapter 8, specifically require foreign capital depositories to be subject to provisions of the Bank Act.

(3) (a) The purpose of the Bank Act is to provide Montana with a sound system of state-chartered banks by providing for and encouraging the development of state-chartered banks while restricting their activities to the extent necessary to protect the interests of depositors. The purpose includes:

(i) the sound conduct of the business of banks;

(ii) the conservation of bank assets;

(iii) the maintenance of adequate reserves against deposits;

(iv) the opportunity for banks to compete with other businesses, including but not limited to other financial organizations existing under the laws of this state, other states, the United States, and foreign countries;

(v) the opportunity for banks to serve the citizens of this state;

(vi) the opportunity for banks to participate in and promote the economic progress of Montana and the United States;

(vii) the opportunity for the management of banks to exercise business judgment in conducting the affairs of their institutions; and

(viii) modernization and simplification of the law governing banking by providing that banks have all the rights and powers granted corporations, except as otherwise provided in this chapter.

(b) The Bank Act does not restrict the activities of banks for the purpose of protecting any person from competition from banks and does not confer any right or cause of action upon any competitor.

(c) The purpose contained in this subsection (3) constitutes the standards to be observed by the commissioner of banking and financial institutions in the exercise of authority under the Bank Act and provides guidelines in the construction and application of the Bank Act.

History: En. Sec. 1, Ch. 89, L. 1927; re-en. Sec. 6014.1, R.C.M. 1935; R.C.M. 1947, 5-101; amd. Sec. 4, Ch. 395, L. 1993; amd. Sec. 74, Ch. 382, L. 1997.

Cross-References

Penalty for transacting business without certificate, 32-1-403.

Building and loan associations, Title 32, ch. 2.

Credit unions, Title 32, ch. 3.

32-1-102. Institutions to which chapter is applicable. (1) The word "bank" as used in this chapter means any corporation, other than a foreign capital depository, as defined in 32-8-103, that has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, except for the operations of a foreign capital depository, whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt. This section does not apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of the agent's principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for that purpose.

(4) Banks are divided into the following classes:

(a) commercial banks;

(b) savings banks;

(c) trust companies;

(d) investment companies.

(5) This chapter does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

(6) Except for the provisions listed in 32-8-106, this chapter does not apply to foreign capital depositories.

History: En. Sec. 2, Ch. 89, L. 1927; re-en. Sec. 6014.2, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1977; R.C.M. 1947, 5-102; amd. Sec. 75, Ch. 382, L. 1997.

Cross-References

Agency, Title 28, ch. 10.

U.C.C. — bank defined, 30-1-201.

Definition of regulated lender, 31-1-111.

Consolidation or merger of banks, 32-1-371.

Penalty for transacting business without certificate, 32-1-403.

Dissolution, closing, and liquidation — bank defined, 32-1-561.

32-1-103. Foreign corporations. Any corporation organized under the laws of any country or state other than this state, which has complied with all of the laws of this state pertaining to foreign corporations and is not engaged in the business of banking or receiving money on deposit in this state, may lend money in this state and, for that purpose, may maintain offices in this state and sue and be sued in this state under its proper corporate name, notwithstanding any prohibitions contained in this chapter as to the use of any words in the name, sign, or advertising matter of corporations not under the supervision of the department.

History: En. Sec. 31, Ch. 89, L. 1927; re-en. Sec. 6014.35, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-510.

Cross-References

Action against business association, 25-5-104.

When advertising as bank prohibited — trade names restricted, 32-1-402.

Foreign business corporations, Title 35, ch. 1, part 10.

Rural cooperative utilities — foreign corporations, 35-18-107.

32-1-104. Number of persons necessary to form corporation. Corporations may be formed by any number of natural persons or by a corporation or other entity authorized to own or control banks and organized under the laws of this state to conduct, as provided in this chapter, the businesses mentioned in 32-1-102.

History: En. Sec. 3, Ch. 89, L. 1927; re-en. Sec. 6014.3, R.C.M. 1935; R.C.M. 1947, 5-103; amd. Sec. 1, Ch. 117, L. 1997.

32-1-105. Commercial bank defined. The term “commercial bank” means any bank authorized by law to:

(1) receive deposits of money;

(2) deal in commercial paper or make loans on commercial paper;

(3) lend money on real or personal property;

(4) engage in business activities directly or indirectly through affiliates or subsidiaries;

(5) discount bills, notes, or other commercial papers; and

(6) buy and sell securities, gold and silver bullion, foreign coins, or bills of exchange.

History: En. Subd. a, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.4, R.C.M. 1935; R.C.M. 1947, 5-104; amd. Sec. 1, Ch. 129, L. 1981; amd. Sec. 1, Ch. 100, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 100 in (4) substituted “engage in business activities directly or indirectly through affiliates or subsidiaries” for “sell credit life and disability insurance on loans to its borrowers”; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

U.C.C. — bank defined, 30-1-201.

U.C.C. — negotiable instruments, Title 30, ch. 3.

Consolidation or merger of banks, 32-1-371.

Disability insurance, 33-1-207.

Life insurance, 33-1-208.

32-1-106. Savings bank defined. The term "savings bank" means a bank organized only for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors and which may:

(1) loan and invest the funds thereof;

(2) receive deposits of money; loan, invest, and collect the same with interest; and repay depositors with or without interest;

(3) sell credit life and disability insurance on loans to its borrowers;

(4) invest said funds and moneys in such property, securities, and obligations as may be prescribed by this chapter; and

(5) declare and pay:

(a) dividends on its general deposits; and

(b) a stipulated rate of interest on deposits made for a stated period or upon special terms.

History: En. Subd. b, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.5, R.C.M. 1935; R.C.M. 1947, 5-105; amd. Sec. 2, Ch. 129, L. 1981.

Cross-References

U.C.C. — bank defined, 30-1-201.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consolidation or merger of banks, 32-1-371.

Investment of capital of savings banks, 32-1-421.

Disability insurance, 33-1-207.

Life insurance, 33-1-208.

32-1-107. Trust company defined — purposes for which may be formed. The term "trust company" means any corporation that is incorporated under the laws of this state for any one or more of the following purposes:

(1) to receive money in trust and to accumulate the money at rates of interest as may be obtained or agreed upon or to allow interest on the money as may be agreed upon;

(2) to accept and execute all trusts and perform the duties committed to them by any person or by any corporations or may be committed or transferred to them by order of any of the courts of record of this state or any other state or of the United States;

(3) to take and accept by grant, assignment, transfer, devise, or bequest and hold any real or personal estate or trust created in accordance with the laws of this state or any other state or of the United States and execute the legal trusts in regard to the same on the terms as may be declared, established, or agreed upon in regard to the estate or trust;

(4) to act as agent for the investment of money for other persons or corporations and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds, or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon;

(5) to accept from and execute trusts for married persons in respect to their individual property, whether real or personal, and act as agents for them in the management of the property and generally to have and exercise powers as are usually had and exercised by trust companies;

(6) to act as trustee, assignee, or receiver in all cases where it is lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver and to be appointed a trustee, assignee, or receiver and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors or of the estate of any person of unsound mind, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates;

(7) to loan money upon unencumbered real estate, collateral, or personal security and execute and issue notes and debentures payable at a future date and to pledge its mortgages upon real estate and other securities as security for the notes and debentures;

(8) to buy and sell:

(a) government, state, county, municipal, and other bonds. The trust company may invest in United States obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(b) all kinds of negotiable, nonnegotiable, and commercial paper, stocks, and other investment securities; and

(c) gold and silver bullion, foreign coins, bills of exchange, and foreign and domestic exchange;

(9) to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors; to take and receive from any individual or corporation on deposit for safekeeping and storage, gold and silver plate, jewelry, stocks, securities, and other valuable and personal property; to collect coupons, interest, and dividends on securities described in this section; and to rent out the use of safes and other receptacles on their premises upon terms and for compensation as may be agreed upon.

History: En. Subd. c, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.6, R.C.M. 1935; amd. Sec. 18, Ch. 293, L. 1975; R.C.M. 1947, 5-106; amd. Sec. 2, Ch. 137, L. 1989.

Cross-References

U.C.C. — negotiable instruments, Title 30, ch. 3.

U.C.C. — investment securities, Title 30, ch. 8.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consolidation or merger of banks, 32-1-371.

Subsidiary trust companies, Title 32, ch. 1, part 8.

Business corporations, Title 35, ch. 1.

Trust Code, Title 72, ch. 33 through 36.

32-1-108. Investment company defined — purposes for which may be formed. The term "investment company" means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

(1) to receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon or to allow such interest as may be agreed upon and to issue and sell its contracts or certificates of indebtedness, directly or through an agent or broker, bearing fixed rates of interest, in whole or

in part, with participation or nonparticipation in the profits of the corporation and maturing at fixed periods of time, or otherwise, as may be fully set forth in said contracts or certificates;

(2) to buy and sell government, state, county, municipal, and other bonds and all kinds of negotiable and nonnegotiable and commercial paper, stocks, and other investment securities;

(3) to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with depositors, and to collect coupons, interest, and dividends on securities described in (2).

History: En. Subd. d, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.7, R.C.M. 1935; R.C.M. 1947, 5-107.

Cross-References

U.C.C. — negotiable instruments, Title 30, ch. 3.

U.C.C. — investment securities, Title 30, ch. 8.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consolidation or merger of banks, 32-1-371.

Business corporations, Title 35, ch. 1.

32-1-109. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).

(2) "Bank holding company" means a bank holding company registered under the federal Bank Holding Company Act of 1956, as amended.

(3) "Board" means the state banking board provided for in 2-15-1803.

(4) "Branch bank" means:

(a) a banking house, other than the main banking house, maintained and operated by a bank doing business in the state and at which deposits are received, checks are paid, or money is lent, but does not include a satellite terminal, as defined in 32-6-103, or the office of an affiliated depository institution acting as an agent; and

(b) in the case of a trust company, any office at which trust services are provided.

(5) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(6) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

(7) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Depository institution" means a bank or savings association organized under the laws of a state or the United States.

(10) "Division" means the division of banking and financial institutions of the department.

(11) "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

(12) "Main banking house" means the designated principal place of business of a bank in the state.

(13) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any 1 year.

(14) "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

(15) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

(16) "Savings association" means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state.

(17) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of an existing bank or savings association.

(18) "Subsidiary" means a company 25% or more of whose voting shares or equity interests are owned and controlled by a bank.

(19) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.

(20) "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

(21) "Undivided profits" means the credit balance of the profit and loss account of a bank.

History: En. Sec. 5, Ch. 89, L. 1927; re-en. Sec. 6014.9, R.C.M. 1935; amd. Sec. 1, Ch. 431, L. 1975; R.C.M. 1947, 5-109; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 483, L. 1983; amd. Sec. 2, Ch. 75, L. 1985; amd. Sec. 1, Ch. 322, L. 1989; amd. Sec. 5, Ch. 395, L. 1993; amd. Sec. 2, Ch. 117, L. 1997; amd. Sec. 2, Ch. 100, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 100 inserted definition of subsidiary; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Demand or time deposits, 32-1-445.

32-1-110. Punishment. When no other punishment is provided, a person willfully or knowingly violating parts 1 through 5 of this chapter is guilty of a misdemeanor. Upon information furnished by the department, the attorney general shall sue to enforce parts 1 through 5 of this chapter.

History: En. Sec. 143, Ch. 89, L. 1927; re-en. Sec. 6014.153, R.C.M. 1935; amd. Sec. 61, Ch. 431, L. 1975; R.C.M. 1947, 5-1123.

Cross-References

Attorney General — general duties, 2-15-501.

Penalty for transacting business without certificate, 32-1-403.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty specified, 46-18-212.

32-1-111. Attachments prohibited. No property owned by any bank organized under the laws of the state of Montana shall be subject to attachment.

History: En. Sec. 96, Ch. 89, L. 1927; re-en. Sec. 6014.107, R.C.M. 1935; R.C.M. 1947, 5-1023.

Cross-References

Prejudgment attachment, Title 27, ch. 18.

32-1-112. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of Title 35, chapter 1, apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with Title 35, chapter 1.

(2) The provisions of 35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, 35-1-1207, and Title 35, chapter 1, part 10, do not apply to banks.

History: En. Sec. 13, Ch. 395, L. 1993.

Part 2

Functions of State Banking Board and Department of Commerce

Part Cross-References

State Banking Board, 2-15-1803.

32-1-201. State banking board — secretary — meetings — per diem. (1) The state banking board, created in 2-15-1803, shall elect a secretary from its members to serve at the pleasure of the board.

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold meetings at the office of the department at dates and times set by the department. Special meetings may be called by the presiding officer at any time upon 3 days' notice to the members.

(4) A quorum for all meetings is a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) A board member may be removed by the governor without cause in any case.

(6) The board members shall receive compensation and travel expenses in the same manner and amount as provided for in 37-1-133 for boards allocated to the department of commerce. The costs and expenses of the board are legitimate charges of the department.

History: En. Sec. 3, Ch. 420, L. 1973; amd. Sec. 11, Ch. 71, L. 1977; amd. Sec. 2, Ch. 453, L. 1977; R.C.M. 1947, 5-609; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 6, Ch. 474, L. 1981; amd. Sec. 1, Ch. 9, L. 1987; amd. Sec. 7, Ch. 395, L. 1993.

Cross-References

Powers and duties of Governor, 2-15-201.

32-1-202. Powers and duties of board. The board shall:

(1) make final determinations upon applications for certificates of authorization for foreign capital depositories and new banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the department as the duties and powers relate to banking and to the regulation of foreign capital depositories;

(3) upon request of an applicant or the department, review a decision of the department on an application for the formation or closure of branch banks, sales of branch banks, or the consolidation, merger, or relocation of banks and branch banks; and

(4) conduct hearings as provided in 32-1-204.

History: En. Sec. 4, Ch. 420, L. 1973; amd. Sec. 22, Ch. 431, L. 1975; amd. Sec. 12, Ch. 71, L. 1977; R.C.M. 1947, 5-610; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 2, Ch. 322, L. 1989; amd. Sec. 8, Ch. 395, L. 1993; amd. Sec. 2, Ch. 265, L. 1995; amd. Sec. 3, Ch. 117, L. 1997; amd. Sec. 76, Ch. 382, L. 1997.

Cross-References

Board to refuse or approve application, 32-1-303.

Consolidation or merger of banks, 32-1-371.

Branch bank — detached facilities, 32-1-372.

Sale of branch bank, 32-1-376.

32-1-203. Rules adopted by board — new banks. The board may adopt rules necessary for the administration of 32-1-201 through 32-1-206 in accordance with the Montana Administrative Procedure Act. In particular, the board shall adopt rules concerning the authorization of new banks organized under the laws of this state. Rules must contain minimum standards under which an application for a new bank must be determined, including the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to ensure solvency and that establishment of the new bank organized under the laws of this state will be in the public interest.

History: En. Sec. 5, Ch. 420, L. 1973; amd. Sec. 23, Ch. 431, L. 1975; amd. Sec. 13, Ch. 71, L. 1977; R.C.M. 1947, 5-611; amd. Sec. 3, Ch. 322, L. 1989; amd. Sec. 4, Ch. 117, L. 1997.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Incorporation, 32-1-302.

Board to refuse or approve application, 32-1-303.

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

32-1-204. Hearings — notice. (1) (a) A hearing must be conducted upon all applications for new bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a contested case, whether or not any protest to the application is filed.

(b) A notice of the filing of an application for a new bank certificate of authorization must be mailed to all banks within 100 miles of the proposed location, measured in a straight line.

(c) A hearing may not be conducted sooner than 30 days or later than 90 days following the mailing of the notice.

(d) A bank filing a written protest with the board prior to the date of the hearing must be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, the right to receive all notices, a copy of the application, and all orders, and the right of judicial review and appeal.

(e) Notwithstanding the requirements of subsections (1)(a) through (1)(d), when the deposit liability of any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the board may issue a certificate of authorization without notice or hearing, according to rules adopted by the board.

(2) (a) A hearing must be conducted by the board upon the request of a person timely protesting an application for the formation, relocation, closure, or sale of a branch bank or for the consolidation, merger, or relocation of a bank if the application is approved by the department and if the board determines that there is a substantial basis for the protest. A person requesting a hearing under this subsection (2)(a) is entitled to judicial review of a denial of a hearing by the board.

(b) If a hearing is required under this subsection (2), the hearing may not be held sooner than 30 days or later than 90 days following the filing of the request for a hearing by the protesting party. A protesting party must be admitted as a party, as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of judicial review and appeal.

History: En. Sec. 6, Ch. 420, L. 1973; amd. Sec. 24, Ch. 431, L. 1975; R.C.M. 1947, 5-612; amd. Sec. 1, Ch. 567, L. 1987; amd. Sec. 3, Ch. 265, L. 1995; amd. Sec. 5, Ch. 117, L. 1997.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Incorporation, 32-1-302.

Board to refuse or approve application, 32-1-303.

Consolidation or merger of banks, 32-1-371.

Branch bank — detached facilities, 32-1-372.

Sale of branch bank, 32-1-376.

32-1-205. Board rules for discovery and hearing procedures. (1) The board shall, under rules adopted by it, permit prehearing discovery procedures, including the taking of depositions and the production of documents. The rules of civil procedure for state courts shall furnish guidelines for such rules.

(2) In adopting rules for hearings, the board shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives, to apply both to discovery procedures and to hearings, and the board shall have authority to provide for issuance of subpoenas and administration of oaths.

History: En. Sec. 7, Ch. 420, L. 1973; R.C.M. 1947, 5-613; amd. Sec. 139, Ch. 575, L. 1981.

Cross-References

Officers who may administer oaths, 1-6-101.

Code of ethics, Title 2, ch. 2, part 1.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

32-1-206. Disqualification of board member — when. Any board member shall disqualify himself from acting upon any matter in which he or any bank or financial institution in which he has a direct or indirect interest is involved, competitively or otherwise.

History: En. Sec. 8, Ch. 420, L. 1973; R.C.M. 1947, 5-614.

Cross-References

Sale of securities by officer to bank, 32-1-463.

Limit on loans to officer, director, or principal shareholder, 32-1-465.

Purchase of obligation of bank by officer, 32-1-466.

Loans to managing officer, 32-1-467.

32-1-207 through 32-1-210 reserved.

32-1-211. Examination and supervision by department — division of banking and financial institutions — commissioner. (1) The department shall exercise constant supervision over the books and affairs of all banks and trust companies doing business in this state.

(2) Except as provided in subsection (9), the department shall:

(a) examine, at least once every 24 months, each bank or trust company and verify the assets and liabilities of each and investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books; and

(b) submit in writing to the examined bank or trust company a report of the examination's findings no later than 60 days after the completion of the examination.

(3) The department shall investigate the methods of operation and conduct of business of the banks and trust companies and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles.

(4) The department may examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a bank or trust company regarding the affairs and business of the bank or trust company.

(5) The department may, in the performance of its official duties, issue subpoenas and administer oaths. In case of a refusal to obey a subpoena issued by the department, the refusal may be reported to the district court of the district in which the bank or trust company is located. The court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(6) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(7) All officers, directors, agents, and employees of banks or trust companies doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank or trust company shall at all times afford reasonable facilities for the examinations and make returns and reports to the department as it may require. They shall also attend hearings and answer under oath the department's inquiries, produce and exhibit any books, accounts, documents, and property the department desires to inspect, and in all things aid the department in the performance of its duty.

(8) There is within the department a division of banking and financial institutions. The head of the division is the commissioner of banking and financial institutions, who shall exercise supervision and control over the activities and employees of the division. The position of commissioner is an exempt position as provided in 2-18-103. The commissioner must be hired by and serve at the pleasure of the director of the department. The director may consult with the board in hiring or terminating the commissioner.

(9) The commissioner may accept as the examination required by this section the findings or results of an examination of a bank or trust company that was made by a regulatory or insuring agency of the United States authorized to make the examination.

History: En. Sec. 71, Ch. 89, L. 1927; re-en. Sec. 6014.75, R.C.M. 1935; amd. Sec. 30, Ch. 431, L. 1975; R.C.M. 1947, 5-901; amd. Sec. 2, Ch. 9, L. 1987; amd. Sec. 1, Ch. 199, L. 1989; amd. Sec. 6, Ch. 395, L. 1993.

Cross-References

Oaths, Title 1, ch. 6, part 1.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Consumer protection — Department authority, 30-14-114.

Unfair trade practices — investigations, 30-14-221.

Penalty for transacting business without certificate, 32-1-403.

Examination by corporation — accepted when, 32-1-605.

Building and loan associations — Department responsibility, Title 32, ch. 2, part 3.

Credit unions — examinations, 32-3-203.

Access to records — witnesses, 32-5-404.

32-1-212. Director and employees not to be interested in banks. Neither the director of the department of commerce nor any bank examiner may be interested in or a borrower from any state bank, directly or indirectly.

History: En. Sec. 58, Ch. 89, L. 1927; re-en. Sec. 6014.62, R.C.M. 1935; amd. Sec. 20, Ch. 431, L. 1975; amd. Sec. 10, Ch. 71, L. 1977; R.C.M. 1947, 5-604; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Public employees — code of ethics, Title 2, ch. 2, part 1.

32-1-213. Payments to be made by banks, investment companies, and trust companies. Each bank, trust company, or investment company under the supervision of the department shall pay to the department fees set by the department by rule to recover all of the costs of administering the program for the supervision of banks, trust companies, and investment companies. The department may amend the rule setting the fees on or before June 1 and December 1 of each year. The funds collected must be deposited in the state special revenue fund for the use of the department in its examination function.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; re-en. Sec. 6014.82, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959; amd. Sec. 1, Ch. 256, L. 1971; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-908; amd. Sec. 1, Ch. 289, L. 1979; amd. Sec. 1, Ch. 507, L. 1983; amd. Sec. 1, Ch. 600, L. 1985; amd. Sec. 6, Ch. 117, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State finance — fund structure, 17-2-102.

32-1-214. Special examination defined. A special examination is an examination made by the department otherwise than in the ordinary routine of the department because, in its opinion, the condition of the bank requires the examination or an examination made at the request of the board of directors or stockholders of a bank.

History: En. Sec. 92, Ch. 89, L. 1927; re-en. Sec. 6014.103, R.C.M. 1935; amd. Sec. 35, Ch. 431, L. 1975; amd. Sec. 18, Ch. 71, L. 1977; R.C.M. 1947, 5-1019.

Cross-References

Examinations by corporation — accepted when, 32-1-605.

Building and loan associations — examinations by Department, 32-2-301.

Credit unions — examinations, 32-3-203.

32-1-215. Special examinations and fees — report within 120 days. Special examinations may be made of a bank, trust company, investment company, building and loan association, or credit union when in the judgment of the department it is considered necessary, and the special examination shall be charged for at a rate that equals the department's actual costs for examiner wages and travel expenses. All special examination fees or charges shall be paid at the conclusion of the examination, and the moneys collected by the department shall be paid to the state treasurer for the credit of the state special revenue fund for the use of the department in its examination function. The department shall submit in writing to the examined bank a report of the examination's findings no later than 120 days after the completion of the examination.

History: En. Sec. 2, Ch. 167, L. 1929; re-en. Sec. 6014.84, R.C.M. 1935; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147, L. 1963; amd. Sec. 22, Ch. 249, L. 1967; amd. Sec. 5, Ch. 256, L. 1971; amd. Sec. 31, Ch. 431, L. 1975; R.C.M. 1947, 5-910; amd. Sec. 2, Ch. 600, L. 1985; amd. Sec. 2, Ch. 199, L. 1989.

Cross-References

Building and loan associations — examinations by Department, 32-2-301.

Credit unions — examinations, 32-3-203.

32-1-216. Examination at request of directors. When requested in writing, upon the authority of a majority of the board of directors of any bank, to make an examination of such bank, the department shall do so.

History: En. Sec. 93, Ch. 89, L. 1927; re-en. Sec. 6014.104, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1020.

Cross-References

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

32-1-217. Repealed. Sec. 50, Ch. 395, L. 1993.

History: En. Sec. 98, Ch. 89, L. 1927; re-en. Sec. 6014.109, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1025.

32-1-218. Department to make rules. (1) The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

(2) The department may adopt uniform rules to govern the examination and reports of banks and trust companies and prescribe the form in which banks and trust companies report their assets, liabilities, and reserves.

(3) The department may promulgate reasonable rules concerning applications for and determinations on applications for the formation, relocation, closure, and sale of branch banks and applications for the formation, consolidation, and merger of shell banks.

(4) The department may adopt rules, issue orders and declaratory statements, disseminate information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter.

History: (1)En. Sec. 100, Ch. 89, L. 1927; re-en. Sec. 6014.111, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 20, Ch. 71, L. 1977; Sec. 5-1027, R.C.M. 1947; (2)En. Sec. 91, Ch. 89, L. 1927; re-en. Sec. 6014.102, R.C.M. 1935; amd. Sec. 34, Ch. 431, L. 1975; Sec. 5-1018, R.C.M. 1947; R.C.M. 1947, 5-1018, 5-1027; amd. Sec. 9, Ch. 395, L. 1993; amd. Sec. 7, Ch. 117, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

32-1-219. Reliance on order — limit on liability. A person acting in good faith reliance upon a rule, order, or declaratory statement issued by the division is not subject to any criminal, civil, or administrative liability for the action if a subsequent decision by a court of competent jurisdiction invalidates the rule, order, or declaratory statement. In the case of an order or declaratory statement that is not of general application, only the person to whom the order or declaratory statement was issued is entitled to rely upon it, unless a third person is dealing with material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.

History: En. Sec. 10, Ch. 395, L. 1993.

32-1-220. Access to holding companies and affiliated entities. The division may review the books and affairs of a bank holding company operating under the Bank Holding Company Act of 1956 during the course of a regularly scheduled safety and soundness examination whenever serious regulatory concerns arise that could jeopardize the safety and soundness of the particular subsidiary being examined. The purpose of the authority granted in this section is to resolve serious regulatory concerns that arise during the examination from bank holding company transactions with the subsidiary being examined. The authority granted in this section does not authorize a review of the holding company as a standard procedure when the division has no serious regulatory concerns over transactions with the subsidiary being examined.

History: En. Sec. 11, Ch. 395, L. 1993; amd. Sec. 1, Ch. 148, L. 1997.

32-1-221 through 32-1-230 reserved.

32-1-231. *(Temporary)* **Reports to department of commerce.** (1) The department shall call for the reports specified in this section at least three times each year.

(2) A bank shall make to the department regular call reports according to the form that may be prescribed by the department, verified by oath or affirmation of the president, vice president, or cashier of the bank and attested by the signature of at least two of the directors other than the subscribing officer.

(3) Each report must exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day specified by the department. The "past day specified" by the department, under the provisions of this section, must be the day designated by the comptroller of currency of the United States for reports of national banking associations.

(4) The report must be transmitted to the department within 30 days after the receipt of a request or requisition for it and must be in a form that the department may require. *(Terminates on occurrence of contingency—sec. 2, Ch. 64, L. 1995.)*

32-1-231. *(Effective on occurrence of contingency)* **Reports to department of commerce.** (1) The department shall call for the reports specified in this section at least three times each year.

(2) A bank shall make to the department regular call reports according to the form which may be prescribed by the department, verified by oath or affirmation of the president, vice-president, or cashier of the bank and attested by the signature of at least two of the directors other than the subscribing officer.

(3) Each report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day specified by the department. The "past day specified" by the department, under the provisions of this section, shall be on the day designated by the comptroller of currency of the United States for reports of national banking associations.

(4) The report shall be transmitted to the department within 30 days after the receipt of a request or requisition for it and in a form the department may require. It shall be published as soon as possible at the expense of the bank in a newspaper published in the place where the bank is established or, if there be no newspaper in the place, then in one published nearest to that place in the same county. Proof of the publication shall be furnished at the times and in the manner as may be required by the department.

History: En. Secs. 61, 64, Ch. 89, L. 1927; re-en. Secs. 6014.65, 6014.68, R.C.M. 1935; amd. Secs. 25, 170, Ch. 431, L. 1975; R.C.M. 1947, 5-701, 5-704; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 186, L. 1985; amd. Sec. 1, Ch. 64, L. 1995.

Compiler's Comments

Contingent Termination: Section 2, Ch. 64, L. 1995, provided: "[This act] terminates on the date that the commissioner of financial institutions certifies to the governor that federal banking laws require that a nationally chartered bank publish its call report in a newspaper published in the place where the bank is located."

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Building and loan associations — reports and accounts prescribed by Department, 32-2-302.

Building and loan associations — reports of condition — contents — publication, 32-2-303.

Credit unions — reports, 32-3-202.

32-1-232. Report of declaration of dividend. In addition to the report required by 32-1-231, a bank shall report to the department within 10 days after declaring any dividend, showing the amount of the dividend and the amount of net earnings in excess of the dividend. The report shall be attested as provided in 32-1-231.

History: En. Sec. 62, Ch. 89, L. 1927; re-en. Sec. 6014.66, R.C.M. 1935; amd. Sec. 26, Ch. 431, L. 1975; amd. Sec. 14, Ch. 71, L. 1977; R.C.M. 1947, 5-702.

Cross-References

Dividends, surplus, losses, and bad debts, 32-1-452.

32-1-233. Special reports to department. In addition to the information obtained from the report required by 32-1-231, the department may also require a bank to furnish a special report in writing, verified as required by 32-1-231, when in its judgment the special report is necessary to inform it fully of the actual financial condition and affairs of the bank. A willfully false statement in the report is perjury and shall be punished accordingly.

History: En. Sec. 63, Ch. 89, L. 1927; re-en. Sec. 6014.67, R.C.M. 1935; amd. Sec. 27, Ch. 431, L. 1975; R.C.M. 1947, 5-703.

Cross-References

Fraud by director, officer, or employee, 32-1-464.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Perjury, 45-7-201.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

32-1-234. Confidentiality — penalties. (1) (a) The report and any information contained in the reports and statements provided for, other than those reports which are required to be published, must be considered secret and for the confidential information of the department only. The information may not be imparted to persons who are not officially associated with the department, and the information contained in the reports and statements may be used by the department only in the furtherance of its official duties.

(b) The department may exchange information with federal financial institution regulatory agencies and with the financial regulatory departments of other states. The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be imparted to any person not officially associated with the department. The information must be used by the department only in the furtherance of its official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a bank must be removed from office and is also guilty of a felony. Upon conviction, the person shall be fined an amount not exceeding $1,000, imprisoned in a state correctional facility for a term not exceeding 5 years, or both.

History: En. Secs. 65, 85, Ch. 89, L. 1927; re-en. Secs. 6014.69, 6014.96, R.C.M. 1935; amd. Secs. 28, 33, Ch. 431, L. 1975; R.C.M. 1947, 5-705, 5-1012; amd. Sec. 12, Ch. 395, L. 1993.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records generally, Title 2, ch. 6, part 1.

Fraud by director, officer, or employee, 32-1-464.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

32-1-235. Penalty for failure to make report within thirty days. If any bank neglects to make out or transmit the statements required by this chapter within 30 days after call, it shall be subject to a penalty of $20 for each day in default after the period respectively required by this chapter that it may delay to make and transmit any such statements. Should any bank delay for a period of 1 month to make out and transmit the statements and proofs of publication required by this chapter beyond the period when the same is required to be made or willfully violate any of the provisions of this chapter with reference to said statements and reports, the directors shall be personally responsible for all the debts of such corporation contracted previous to and during the period of such neglect.

History: En. Sec. 66, Ch. 89, L. 1927; re-en. Sec. 6014.70, R.C.M. 1935; R.C.M. 1947, 5-706; amd. Sec. 2, Ch. 186, L. 1985.

32-1-236. False statements and entries considered felony. Every officer or other person authorized by this chapter who willfully and knowingly makes any false statement of facts, statement of account, or report and every officer, agent, or clerk of any bank who willfully and knowingly makes any false entries in the books of such bank or knowingly subscribes or exhibits false papers with the intent to deceive any person authorized to examine such bank and every person authorized by the provisions of this chapter to make statements or reports who willfully and knowingly subscribes or makes any false statement or report is guilty of a felony and upon conviction thereof shall be imprisoned in the state prison for a term of not less than 1 or more than 10 years or be fined an amount not to exceed $50,000, or both.

History: En. Sec. 67, Ch. 89, L. 1927; re-en. Sec. 6014.71, R.C.M. 1935; amd. Sec. 15, Ch. 71, L. 1977; R.C.M. 1947, 5-707; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Selection of officers and employees — meetings and minutes, 32-1-325.

Fraud by director, officer, or employee, 32-1-464.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Felony charges — suspension or prohibition, 32-1-908.

Corporations — penalty imposed upon officers and directors for signing false document, 35-1-428.

Part 3
Formation and Reorganization

Part Cross-References

Banks subject to corporation license tax, 15-31-101.

U.C.C. — investment securities, Title 30, ch. 8.

32-1-301. Organization and incorporation — articles of incorporation. (1) A person desiring to organize a banking corporation or a foreign capital depository shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must set forth:

(a) the information required by 35-1-216(1);

(b) the name of the city or town and county in which the principal office of the corporation or foreign capital depository is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation or foreign capital depository is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation or foreign capital depository desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in 35-1-216(2).

(3) A banking corporation or foreign capital depository may not adopt or use the name of any other banking corporation or association or foreign capital depository, and the corporation name must comply with 35-1-308(2) through (4).

(4) A banking corporation or a foreign capital depository may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation or foreign capital depository to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation or a foreign capital depository may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation.

History: Ap. p. Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1965; Sec. 5-201, R.C.M. 1947; Ap. p. Sec. 2661, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R.C.M. 1921; re-en. Sec. 9964, R.C.M. 1935; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975; Sec. 93-100-2, R.C.M. 1947; R.C.M. 1947, 5-201, 93-100-2(part); amd. Sec. 1, Ch. 179, L. 1985; amd. Sec. 1, Ch. 278, L. 1989; amd. Sec. 14, Ch. 395, L. 1993; amd. Sec. 77, Ch. 382, L. 1997.

Cross-References

Taking acknowledgments and affidavits, 3-1-404.

Certificate of authenticity of Justice's Court's certificate of acknowledgment, 3-1-405.

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Number of persons necessary to form corporation, 32-1-104.

When advertising as bank prohibited — trade names restricted, 32-1-402.

Penalty for transacting business without certificate, 32-1-403.

Organization of subsidiary trust companies, 32-1-803.

Business corporations, Title 35, ch. 1.

Shareholder agreements, 35-9-301.

32-1-302. Incorporation. (1) The proposed articles of incorporation must be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(2) Upon the presentation of the proposed articles of incorporation, together with the application, the department shall ascertain whether the requisite capital of the bank, as required in 32-1-307, has been subscribed and been paid up in cash. The department shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by this chapter. The

department shall determine whether the corporate name assumed by the bank, by reason of the use of any one or more of the words "commercial", "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion.

(3) The expenses of the department and the board incurred in the examinations and hearings provided for in this chapter for the formation of new banks must be paid by the proposed bank through advance payment of a reasonable nonrefundable application fee which must be determined by the board by rule.

(4) All information gathered by the department under this section must be transmitted to the board for its use in conducting hearings on applications for certificates of authorization.

History: En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 2, Ch. 431, L. 1975; R.C.M. 1947, 5-202; amd. Sec. 1, Ch. 79, L. 1979; amd. Sec. 15, Ch. 395, L. 1993.

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Powers and duties of State Banking Board, 32-1-202.

When advertising as bank prohibited — trade names restricted, 32-1-402.

Business corporations — formation — articles of incorporation — bylaws, Title 35, ch. 1, part 2.

32-1-303. Board to refuse or approve application. The board may refuse or approve an application for a certificate of authorization in accordance with 32-1-202 through 32-1-206.

History: En. 5-202.1 by Sec. 3, Ch. 431, L. 1975; amd. Sec. 2, Ch. 71, L. 1977; R.C.M. 1947, 5-202.1.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

32-1-304. Repealed. Sec. 2, Ch. 79, L. 1979.

History: En. Sec. 7, Ch. 89, L. 1927; re-en. Sec. 6014.11, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-205.

32-1-305. Repealed. Sec. 50, Ch. 395, L. 1993.

History: En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 4, Ch. 431, L. 1975; R.C.M. 1947, 5-203.

32-1-306. Repealed. Sec. 50, Ch. 395, L. 1993.

History: En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; R.C.M. 1947, 5-204.

32-1-307. Amount of capital. The division, in consultation with the board, shall determine the appropriate level of capitalization of the proposed corporation prior to the issuance of the certificate of authorization.

History: En. Sec. 8, Ch. 89, L. 1927; amd. Sec. 1, Ch. 81, L. 1935; re-en. Sec. 6014.12, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-206; amd. Sec. 16, Ch. 395, L. 1993.

Cross-References

Business corporations — shares, Title 35, ch. 1, part 6.

32-1-308. Bylaws. The bylaws must be certified by a majority of the directors and the secretary of the corporation and recorded in the book of bylaws. The book must be open to public inspection during office hours. A copy of the bylaws must also be transmitted to the department.

History: En. Sec. 13, Ch. 89, L. 1927; re-en. Sec. 6014.17, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-211; amd. Sec. 17, Ch. 395, L. 1993.

Cross-References

Bylaws regarding banking hours and business days, 32-1-484.

32-1-309 through 32-1-320 reserved.

32-1-321. Calling of first meeting — cancellation of certificate. When the formation of the corporation is completed under the provisions of this chapter by the issuance of the certificate of incorporation by the secretary of state, any three such incorporators signing the articles of agreement may call the first meeting of the corporation at such time and place as they may appoint by giving notice thereof by publication in some newspaper of general circulation in the county in which the principal office for the transaction of business is to be located at least 5 days before the time appointed for such meeting. If all the subscribers to the capital stock unite in a call for such meeting, in writing, no notice is necessary. If the first meeting be not called within 30 days from the date of the certificate of incorporation or if such corporation shall fail to commence the business for which it is incorporated within 90 days from the date of the issuance of the certificate of authorization, the department is authorized to cancel such certificate of authorization.

History: En. Sec. 9, Ch. 89, L. 1927; re-en. Sec. 6014.13, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-207.

Cross-References

Powers and duties of State Banking Board, 32-1-202.

32-1-322. Board of directors — qualifications, tenure, and vacancies. (1) The affairs of the bank must be managed by a board of directors consisting of not less than three persons. At least two-thirds of the board must be residents of Montana. Directors need not be shareholders of the corporation unless required by the articles of incorporation or bylaws. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) The directors must be elected for a term of 1 year at the annual meeting of the stockholders. The annual meeting must be held before April 15 of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation is not dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons elected shall hold their office until successors are elected and qualified. Every director shall take and subscribe an oath that the director will diligently and honestly perform the director's duty in the office and that the director will not knowingly violate or permit a violation of any of the provisions of this chapter. The oaths must be made in duplicate; one copy must be transmitted to and filed with the department, and one copy must be kept on file in the office of the bank.

History: En. Sec. 10, Ch. 89, L. 1927; re-en. Sec. 6014.14, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1957; amd. Sec. 5, Ch. 431, L. 1975; R.C.M. 1947, 5-208; amd. Sec. 1, Ch. 84, L. 1979; amd. Sec. 1, Ch. 341, L. 1981; amd. Sec. 1, Ch. 561, L. 1983; amd. Sec. 2, Ch. 179, L. 1985; amd. Sec. 1, Ch. 24, L. 1989; amd. Sec. 18, Ch. 395, L. 1993.

Cross-References

Officers who may administer oaths, 1-6-101.

Persons previously convicted under banking laws — bank employment, 32-1-462.

Building and loan associations — directors and officers, 32-2-206.

Business corporations — directors and officers, Title 35, ch. 1, part 4.

32-1-323. Repealed. Sec. 50, Ch. 395, L. 1993.

History: En. Sec. 23, Ch. 89, L. 1927; re-en. Sec. 6014.27, R.C.M. 1935; R.C.M. 1947, 5-502.

32-1-324. Repealed. Sec. 3, Ch. 24, L. 1989.

History: En. Sec. 11, Ch. 89, L. 1927; re-en. Sec. 6014.15, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-209; amd. Sec. 3, Ch. 179, L. 1985.

32-1-325. Selection of officers and employees — minutes of meetings. (1) The board of directors of a bank must hold a meeting at least quarterly.

(2) The board of directors may elect a president, one or more vice-presidents, a cashier and one or more assistant cashiers, and other officers and employees that they may from time to time consider to be to the best interest of the bank and fix their compensation. The president must be chosen from the board of directors.

(3) The board of directors shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose. The minutes must disclose the dates of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors must be subscribed to by the presiding officer and the person responsible for preparing the minutes. The minutes must be read and approved at the following meeting of the board of directors, and the minutes of the following meeting must show that fact. The minute book must be kept in the main office of the bank at all times and must be presented to the department at the time of its examination of the books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank and the names of the directors in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor.

History: En. Sec. 12, Ch. 89, L. 1927; re-en. Sec. 6014.16, R.C.M. 1935; amd. Sec. 6, Ch. 431, L. 1975; R.C.M. 1947, 5-210; amd. Sec. 1, Ch. 264, L. 1983; amd. Sec. 4, Ch. 179, L. 1985; amd. Sec. 19, Ch. 395, L. 1993.

Cross-References

False statements and entries considered felony, 32-1-236.

Fraud by director, officer, or employee, 32-1-464.

Organization of subsidiary trust companies, 32-1-803.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-1-326 through 32-1-330 reserved.

32-1-331 through 32-1-334. Repealed. Sec. 50, Ch. 395, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

32-1-331. En. Sec. 33, Ch. 89, L. 1927; re-en. Sec. 6014.37, R.C.M. 1935; R.C.M. 1947, 5-512.

32-1-332. En. Sec. 22, Ch. 89, L. 1927; re-en. Sec. 6014.26, R.C.M. 1935; R.C.M. 1947, 5-501.

32-1-333. En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; R.C.M. 1947, 5-401.

32-1-334. En. Sec. 42, Ch. 89, L. 1927; re-en. Sec. 6014.46, R.C.M. 1935; R.C.M. 1947, 5-521.

32-1-335. Purchase or loan of own capital stock prohibited. No bank shall purchase or invest its capital or surplus or money of its depositors, or any part of either, in shares of its own capital stock or loan its capital or surplus or the money of its depositors, or any part of either, on shares of its own capital stock unless such purchase or loan shall be necessary to prevent loss to such bank on debts previously contracted in good faith. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

History: En. Sec. 36, Ch. 89, L. 1927; re-en. Sec. 6014.40, R.C.M. 1935; R.C.M. 1947, 5-515.

Cross-References

Restriction on investment in corporate stock, 32-1-422.

Purchase of obligation of bank by officer, 32-1-466.

32-1-336. Repealed. Sec. 50, Ch. 395, L. 1993.

History: En. Sec. 1, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.1, R.C.M. 1935; R.C.M. 1947, 5-1127.

32-1-337. Repealed. Sec. 50, Ch. 395, L. 1993.

History: En. Sec. 2, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.2, R.C.M. 1935; R.C.M. 1947, 5-1128.

32-1-338. Repealed. Sec. 50, Ch. 395, L. 1993.

History: En. Sec. 3, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.3, R.C.M. 1935; amd. Sec. 63, Ch. 431, L. 1975; R.C.M. 1947, 5-1129.

32-1-339. Right of examination by stockholder. A stockholder of a bank incorporated under the laws of this state who is not a director may not inspect the books and records of the bank showing its transactions with a customer. A stockholder may inspect the books and records of the bank as provided in Title 35, chapter 1, part 11.

History: En. Sec. 108, Ch. 89, L. 1927; re-en. Sec. 6014.119, R.C.M. 1935; R.C.M. 1947, 5-1035; amd. Sec. 20, Ch. 395, L. 1993.

Cross-References

Examination and supervision by Department, 32-1-211.

32-1-340. Conversion of surplus and undivided profits to capital stock. (1) A bank having a surplus and undivided profits equal to or in excess of 50% of its capital stock may increase its capital stock by the issuance of new stock for a part of that surplus and undivided profits.

(2) The increase may be made by a vote of the stock, either at a regular annual stockholders' meeting or at a meeting called for that purpose in accordance with the bylaws of the corporation.

(3) All increases of capital stock made under this section must be accomplished in a manner conforming to the requirements of this chapter pertaining to surplus of banks when first incorporated.

(4) When a bank has voted to issue any stock as contemplated in this section, it shall certify that action to the department, which shall within 30 days approve or reject the plan. Departmental action is final, and written notice of the action must be given to the bank.

History: En. Sec. 97, Ch. 89, L. 1927; re-en. Sec. 6014.108, R.C.M. 1935; amd. Sec. 36, Ch. 431, L. 1975; R.C.M. 1947, 5-1024; amd. Sec. 21, Ch. 395, L. 1993.

Cross-References

Examination and supervision by Department, 32-1-211.

Dividends, surplus, losses, and bad debts, 32-1-452.

Calculation of profits, 32-1-453.

32-1-341 through 32-1-350 reserved.

32-1-351 through 32-1-356. Repealed. Sec. 50, Ch. 395, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

32-1-351. En. Sec. 14, Ch. 89, L. 1927; re-en. Sec. 6014.18, R.C.M. 1935; R.C.M. 1947, 5-212.

32-1-352. En. Sec. 15, Ch. 89, L. 1927; re-en. Sec. 6014.19, R.C.M. 1935; R.C.M. 1947, 5-213.

32-1-353. En. Sec. 16, Ch. 89, L. 1927; re-en. Sec. 6014.20, R.C.M. 1935; amd. Sec. 7, Ch. 431, L. 1975; R.C.M. 1947, 5-214.

32-1-354. En. Sec. 17, Ch. 89, L. 1927; re-en. Sec. 6014.21, R.C.M. 1935; R.C.M. 1947, 5-215.

32-1-355. En. Sec. 18, Ch. 89, L. 1927; re-en. Sec. 6014.22, R.C.M. 1935; amd. Sec. 8, Ch. 431, L. 1975; R.C.M. 1947, 5-216.

32-1-356. En. Sec. 19, Ch. 89, L. 1927; amd. Sec. 1, Ch. 145, L. 1931; re-en. Sec. 6014.23, R.C.M. 1935; amd. Sec. 1, Ch. 131, L. 1937; amd. Sec. 2, Ch. 7, L. 1965; amd. Sec. 9, Ch. 431, L. 1975; R.C.M. 1947, 5-217; amd. Sec. 5, Ch. 179, L. 1985.

32-1-357 through 32-1-360 reserved.

32-1-361. Change from state to national bank. (1) A bank may become a corporation for the purpose of carrying on the business of banking in this state, under the act of congress "to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof", approved June 3, 1864, and under Title 52 of the Revised Statutes of the United States, when:

(a) stockholders owning two-thirds of the stock of the bank vote to become a national bank corporation or execute a written consent authorizing its directors to make the certificate required therefor by the laws of the United States; or

(b) a majority of the directors of the bank, authorized in their discretion to make the change, by a vote of the majority decide to become a national bank corporation.

(2) The cashier of the bank shall:

(a) publish notice of the change once a week for 4 consecutive weeks in the newspaper that the directors select;

(b) send a printed notice by mail or otherwise to all nonvoting or dissenting stockholders; and

(c) notify the department that the bank has decided to become a corporation under the laws of the United States.

History: En. Sec. 75, Ch. 89, L. 1927; re-en. Sec. 6014.86, R.C.M. 1935; amd. Sec. 32, Ch. 431, L. 1975; amd. Sec. 17, Ch. 71, L. 1977; R.C.M. 1947, 5-1002; amd. Sec. 22, Ch. 395, L. 1993.

32-1-362. National bank powers extended to state banks. (1) A bank organized under the laws of this state may engage in any activity or business in which the bank could engage if it were operating as a national bank if the power or activity is not expressly prohibited or limited by the laws of this state and:

(a) if the power or activity is clearly authorized to national banks by federal statute, regulations, or interpretive ruling issued or adopted by a federal banking regulator having jurisdiction over national banks; and

(b) upon application to and approval by the department.

(2) The department may adopt rules to govern the application procedure under this section. The department shall act upon an application under this section within 15 days of receipt of the application. The department may, for good cause, extend the time period for processing an application under this section for an additional 15 days.

History: En. Sec. 1, Ch. 119, L. 1973; R.C.M. 1947, 5-1002.1; amd. Sec. 1, Ch. 163, L. 1981; amd. Sec. 8, Ch. 117, L. 1997; amd. Sec. 3, Ch. 100, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 100 in (1)(a) inserted "or interpretive ruling issued or"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Authority of state banks to make real estate loans, 32-1-430.

Authorized activities of credit unions, 32-3-206.

32-1-363. Surrender of charter by state bank. (1) Any bank which will become a corporation for carrying on the business of banking under the laws of the United States shall cease to be a corporation under the laws of this state, except that for the term of 3 years thereafter its corporate existence shall be deemed to continue for the purposes of prosecuting and defending suits by and against it and of enabling it to close its concerns and to dispose of and convey its property.

(2) The members of the board of directors last in office, when such corporation shall have become a corporation under the laws of the United States, shall continue to be the board of directors of the corporation, with power to take all necessary

measures to carry out and perfect such organization by signing the articles of association and the organization certificate and adopting such regulations as may be just and proper and not inconsistent with the acts of congress in relation thereto.

(3) Such change from a state to a national bank corporation shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national bank corporation or any tax imposed by the laws of this state up to the date of its becoming such national bank corporation, in proportion to the time which has elapsed since the next preceding payment thereof.

History: En. Sec. 76, Ch. 89, L. 1927; re-en. Sec. 6014.87, R.C.M. 1935; R.C.M. 1947, 5-1003.

Cross-References

Corporation license or income tax — banks and savings and loan associations, Title 15, ch. 31, part 7.

32-1-364. Increase or reduction of capital stock. The directors of such new corporation may reduce the capital stock of the bank to its par value by dividing the surplus among its stockholders or may retain such portion of such surplus as they may deem necessary. In case of an increase of the capital stock under the provisions of the acts of congress, the directors may charge the shares of such increased capital stock with a like amount to place the whole of such capital stock on an equality and may award such new stock, or such proportion or fractional parts thereof, to such persons as they shall determine are entitled thereto and as are provided in their articles of association and the acts of congress. New directors may be chosen at such time and in the manner provided in the articles of association and the acts of congress.

History: En. Sec. 77, Ch. 89, L. 1927; re-en. Sec. 6014.88, R.C.M. 1935; R.C.M. 1947, 5-1004.

32-1-365. Certificate of change to national bank. (1) When any such bank has decided to become a corporation under the laws of the United States, the directors shall immediately thereafter execute and transmit to the comptroller of the currency the proper certificate and other instruments for its conversion into a national bank corporation under the laws of the United States.

(2) When any such bank shall have become authorized to commence the business of banking under the laws of the United States, all the property of such bank shall immediately, by act of law and without any conveyance or transfer, be vested in and become the property of the national bank corporation into which such bank shall have been converted.

History: En. Sec. 78, Ch. 89, L. 1927; re-en. Sec. 6014.89, R.C.M. 1935; R.C.M. 1947, 5-1005.

32-1-366 through 32-1-369 reserved.

32-1-370. Interstate merger of banks. (1) (a) A bank located in this state may not enter into a merger transaction with a bank not located in this state if the merger transaction would be effective on or before September 30, 2001.

(b) After September 30, 2001, a bank located in this state that has been in existence at least 5 years is authorized to enter into a merger transaction with a bank not located in this state.

(c) Prior approval of the department is required if the resulting bank in a merger transaction authorized by this section is a bank organized under the laws of this state.

(2) This section implements 12 U.S.C. 1831u(a)(2) and prohibits until October 1, 2001, interstate merger transactions involving banks located in this state.

History: En. Sec. 16, Ch. 117, L. 1997.

32-1-371. Consolidation or merger of banks. (1) (a) Any two or more banks doing business in this state may, with the approval of the department in the case of a resulting state bank, consolidate or merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. Except as otherwise expressly provided in this chapter, the consolidation or merger of a state bank is governed by Title 35, chapter 1.

(b) This section does not permit a bank or bank holding company located in another state to acquire by consolidation or merger any bank or branch bank in this state.

(c) A bank organized under the laws of this state may, with the approval of the department in the case of a resulting bank, consolidate or merge with a savings association located in this state and may, upon the consolidation or merger, maintain the branch banks and other offices previously maintained by both the bank and the savings association.

(2) Upon consolidation or merger, the corporate franchise, the corporate life, being, and existence, and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, and guardian and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed of the consolidating or merging banks, are, without the necessity of any instrument of transfer, consolidated or merged and continued in and held, enjoyed, and assumed by the consolidated or merged bank. The consolidated or merged bank has the right equal with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to the consolidation or merger and by which will or instrument the consolidating or merging bank was nominated by the maker to the office.

(3) Upon consolidation or merger, the consolidated or merged bank shall designate and operate one of the prior main banking houses of the consolidating or merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other consolidating or merging banks as a branch bank.

(4) Upon consolidation or merger, the resulting bank, including all depository institutions that are affiliates of the resulting bank, may not directly or indirectly control more than 22% of the total amount of deposits of insured depository institutions and credit unions located in this state.

History: En. Sec. 94, Ch. 89, L. 1927; amd. Sec. 1, Ch. 108, L. 1931; re-en. Sec. 6014.105, R.C.M. 1935; amd. Sec. 171, Ch. 431, L. 1975; amd. Sec. 19, Ch. 71, L. 1977; R.C.M. 1947, 5-1021; amd. Sec. 4, Ch. 322, L. 1989; amd. Sec. 4, Ch. 265, L. 1995; amd. Sec. 9, Ch. 117, L. 1997.

Cross-References

Powers and duties of State Banking Board, 32-1-202.

Hearings — notice, 32-1-204.

Building and loan associations — consolidation, transfer, and branching, 32-2-271.

Business corporations — merger, consolidation, share exchange, and sale of assets, Title 35, ch. 1, part 8.

32-1-372. Branch bank. (1) A bank may establish and maintain branch banks, as provided in 32-1-371 and this section, at any place within the state. The formation and operation of a branch bank by a bank organized under the laws of this state require the prior approval of the department.

(2) A branch bank formed under this section may not be closer than 200 feet to a branch bank operated by any other commercial bank or closer than 300 feet to the main banking house of any other commercial bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances specified in this subsection may be decreased by written agreement of the banks involved.

(3) A branch bank may but is not required to offer all services and conduct all business authorized to be offered or conducted by the bank.

(4) A bank authorized to do banking business in this state may use a satellite terminal, as defined in the Montana Electronic Funds Transfer Act, at any location permitted by the Montana Electronic Funds Transfer Act.

(5) A bank may continue to maintain and operate all branch banks and other banking offices, including detached facilities, that are in existence or authorized on July 1, 1997, without further consent, authorization, or approval of the department or the board. All offices established and maintained by a bank, other than the main banking house, at which deposits are received, checks are paid, or money is lent must be considered branch banks for all purposes under this title.

(6) A bank located in this state may provide services for other banks located in this state, whether or not those banks are affiliates.

(7) This section may not be interpreted to authorize a bank not located in this state to establish, operate, or maintain a branch bank in this state.

History: En. Sec. 101, Ch. 89, L. 1927; re-en. Sec. 6014.112, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1963; amd. Sec. 1, Ch. 80, L. 1965; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 22, Ch. 503, L. 1977; R.C.M. 1947, 5-1028; amd. Sec. 5, Ch. 322, L. 1989; amd. Sec. 1, Ch. 15, L. 1991; amd. Sec. 5, Ch. 401, L. 1993; amd. Sec. 1, Ch. 307, L. 1995; amd. Sec. 10, Ch. 117, L. 1997.

Cross-References

Trust offices of subsidiary trust companies, 32-1-805.

Trust offices of affiliated banks, 32-1-806.

Montana Electronic Funds Transfer Act, Title 32, ch. 6, part 1.

32-1-373. Banks may join federal reserve bank. Any bank is hereby authorized and empowered to join or associate itself with the federal reserve bank, or any branch thereof, and nothing herein contained shall prevent or prohibit any bank from joining or associating itself with any such banks or branch thereof or from investing any part of its capital or surplus in the stock of such bank, in accordance with the terms and provisions of the act of congress creating such association. Any bank joining or associating itself with such bank shall be permitted to conform to and transact its business in accordance with the terms and provisions of the act of congress creating the same and the rules of such federal reserve bank.

History: En. Sec. 28, Ch. 89, L. 1927; re-en. Sec. 6014.32, R.C.M. 1935; R.C.M. 1947, 5-507.

Cross-References

Reserve requirements, 32-1-455.

32-1-374. Reorganization of national bank as state bank. (1) A national bank that is authorized to dissolve and that has taken the necessary steps to effect dissolution may reorganize as a state bank upon the consent in writing of the owners of two-thirds of the capital stock of the bank and with the approval of the department. The stockholders shall make, execute, and acknowledge articles of incorporation as required by the laws of the state of Montana and shall set forth in the articles of incorporation the written consent of the stockholders. Upon the filing of the articles as provided by law and upon the approval of the department, the bank is reorganized under this chapter, and all assets, real and personal, of the dissolved national bank are vested in and become the property of the reorganized state bank, subject to all liabilities of the national bank not liquidated before the reorganization.

(2) The cashier of the bank shall:

(a) publish notice of the change once a week for 4 consecutive weeks in the newspaper that the directors select;

(b) send a printed notice by mail or otherwise to all nonvoting or dissenting stockholders; and

(c) notify the department that the bank has decided to become a corporation under the laws of Montana.

History: En. Sec. 79, Ch. 89, L. 1927; re-en. Sec. 6014.90, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1006; amd. Sec. 23, Ch. 395, L. 1993.

Cross-References

Examination and supervision by Department, 32-1-211.

32-1-375. Prohibition of acquisition — exception. (1) Notwithstanding any other provision of law, a bank holding company or any other company may not acquire or control an institution in this state that is an "insured bank" as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or any institution eligible to become an insured bank as defined therein if the institution does not both accept demand deposits and engage in the business of making commercial loans.

(2) Nothing in this section prohibits the continued control of a financial institution eligible for insurance under the Federal Deposit Insurance Act by a company that acquired the financial institution prior to March 1, 1987.

History: En. Sec. 1, Ch. 491, L. 1987.

Cross-References

Demand deposits defined, 32-1-109.

Federal deposit insurance corporation, Title 32, ch. 1, part 6.

32-1-376. Sale of branch bank. A bank located and doing business in this state may, with the approval of the department in the case of a state bank, buy from any other bank also located and doing business in this state all or substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch banks. Upon completion of the sale, the purchasing bank may operate a branch bank at the selling bank's former branch bank location.

History: En. Sec. 8, Ch. 265, L. 1995; amd. Sec. 11, Ch. 117, L. 1997.

Cross-References

Powers and duties of Board, 32-1-202.

Hearings — notice, 32-1-204.

32-1-377. Agreement of purchase and sale. (1) The selling and purchasing banks shall enter into an agreement that must contain all the terms and conditions of the sale and that must contain:

(a) proper provision for the assumption, payment, transfer, or retention of all the liabilities of the selling bank as to the branch assets and business sold;

(b) proper provision for the assumption, payment, transfer, or retention of the purchasing bank of all fiduciary obligations of the branch or branch business sold.

(2) The agreement for purchase and sale of a state bank must be authorized and approved by the department. The agreement of purchase and sale of a national bank must be in accordance with the laws applicable to national banks.

History: En. Sec. 9, Ch. 265, L. 1995; amd. Sec. 12, Ch. 117, L. 1997.

32-1-378 through 32-1-380 reserved.

32-1-381. Purpose. (1) The purpose of 32-1-381 through 32-1-384 is to:

(a) authorize interstate banking by the acquisition of existing banks within the framework of the "Douglas amendment" to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 through 1850), as amended;

(b) provide a variety of banking alternatives in Montana in terms of the numbers and ownership of banks; and

(c) conform Montana statutes with the provision of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, 1994. Any inconsistencies between the provisions of 32-1-381 through 32-1-384 and Public Law 103-328 must be resolved in favor of Public Law 103-328.

(2) Sections 32-1-381 through 32-1-384 do not authorize the establishment of a branch bank in Montana by a bank not located in Montana. Sections 32-1-371 and 32-1-375 do not apply to acquisitions or transactions authorized in 32-1-381 through 32-1-384.

History: En. Sec. 1, Ch. 401, L. 1993; amd. Sec. 5, Ch. 265, L. 1995; amd. Sec. 137, Ch. 42, L. 1997.

32-1-382. Definitions. As used in 32-1-381 through 32-1-384, unless the context requires otherwise, the following definitions apply:

(1) "Acquire" means:

(a) the direct or indirect purchase or exchange of stock;

(b) the direct or indirect purchase of assets and liabilities; or

(c) a merger.

(2) "Bank" means a commercial bank, as defined in 32-1-105, or a national banking association as designated by 12 U.S.C. 24.

(3) "Bank holding company" means a bank holding company that is registered under the Bank Holding Company Act of 1956, as amended, regardless of where it is located or has its headquarters.

(4) "Control" means:

(a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of voting security;

(b) authority in any manner over the election of a majority of directors; or

(c) power to exercise, directly or indirectly, a controlling influence over management and policies.

(5) "Department" means the department of commerce provided for in 2-15-1801.

(6) "Financial institution" means a bank or bank holding company.

(7) "Headquarters" means the state in which the activities of a bank holding company or a company controlling the bank holding company are "principally conducted" within the meaning of the Bank Holding Company Act of 1956, as amended.

(8) "Located in this state" means:

(a) in the case of a bank, that the organizational certificate identifies an address in this state as the principal place of conducting its business; and

(b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws of this state.

History: **En. Sec. 2, Ch. 401, L. 1993; amd. Sec. 6, Ch. 265, L. 1995.**

32-1-383. Acquisition of financial institution by bank holding company not located in this state — limitations. (1) A bank holding company with headquarters in another state may acquire control of a bank located in this state through acquisition of a financial institution if the bank holding company complies with 32-1-381 through 32-1-384. The bank to be acquired must:

(a) have been conducting business for a continuous period of at least 5 years prior to the effective date of the acquisition; or

(b) be a shell bank organized solely for the purpose of purchasing the assets of a bank that has conducted business for a continuous period of at least 5 years prior to the acquisition.

(2) A bank holding company may acquire control of a bank located in this state by purchase of stock in or by merger with a bank holding company.

(3) A bank, a bank holding company, or a subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if the bank, bank holding company, or subsidiary together with its affiliates would directly or indirectly control more than 22% of the total amount of deposits of insured depository institutions and credit unions located in this state.

(4) The determination of the limit contained in subsection (3) must be based upon public reports filed with the appropriate regulatory agency as of the December 31 preceding the submission to the appropriate federal banking regulatory agency of the application seeking prior approval of the acquisition of control of the bank.

History: **En. Sec. 3, Ch. 401, L. 1993; amd. Sec. 7, Ch. 265, L. 1995; amd. Sec. 13, Ch. 117, L. 1997.**

32-1-384. Federal applications — comments. (1) A bank holding company shall file with the department a copy of applications submitted to a federal banking regulatory agency seeking prior approval of the proposed acquisition of a financial institution located in this state. The bank holding company shall also file a statement verifying that the acquisition will not result in a violation of the limit in 32-1-383(3).

(2) The applications and statement are public records, and the department shall allow public inspection of all nonconfidential portions of the applications and statements. The department shall solicit public comment on the applications by promptly publishing notice of the applications in a newspaper of general circulation in the county in which the financial institution to be acquired is located. The department shall send the comments to the appropriate federal banking regulatory agency. The department may intervene in or take other action in a federal banking regulatory authority proceeding.

History: **En. Sec. 4, Ch. 401, L. 1993; amd. Sec. 14, Ch. 117, L. 1997.**

Part 4

Operation and Regulation

Part Cross-References

Home owners' loan corporation bonds — investment and security, 7-15-4504, 7-15-4505, 32-1-424, 32-2-406, 72-31-102.

Deposit of state money in banks — interest, 17-6-102, 17-6-104, 17-6-105.

U.C.C. — negotiable instruments, Title 30, ch. 3.

U.C.C. — bank deposits and collections, Title 30, ch. 4.

U.C.C. — letters of credit, Title 30, ch. 5.

Warranty of money, 30-11-114.

Credit Transactions and Relationships, Title 31.
Issuing bad checks, 45-6-316.
Deceptive practices, 45-6-317.
Forgery, 45-6-325.
Discrimination by financial institutions prohibited, 49-2-305, 49-3-206.
Safe deposit box — joint tenancy, 70-1-308.
Banker's lien, 71-3-1502.
Delivery of money or personal property to minor under Uniform Probate Code, 72-5-104.
Inheritance tax — transfers by foreign representatives, 72-16-701 through 72-16-706.
Montana Uniform Transfers to Minors Act, Title 72, ch. 26.

32-1-401. Bank advertising before issuance of charter. It shall be unlawful for any individual, firm, or corporation to advertise, publish, or otherwise promulgate that it is engaged in the banking business without first having obtained authority from the department, as herein provided. Any such individual or member of such firm or officer of any such corporation so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by the laws of this state.

History: En. Sec. 107, Ch. 89, L. 1927; re-en. Sec. 6014.118, R.C.M. 1935; R.C.M. 1947, 5-1034.

Cross-References

Powers and duties of State Banking Board, 32-1-202.
Organization and incorporation — articles of incorporation — articles of agreement, 32-1-301.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — when no penalty specified, 46-18-212.

32-1-402. When advertising as bank prohibited — trade names restricted. (1) Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received a certificate to do a banking business from the department, may not:

(a) advertise that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) The person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner that leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) (a) A person, firm, company, partnership, or corporation, domestic or foreign that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received from the

department a certificate to do a banking business may not transact business under a name or title that contains the word "bank", "banker", "banking", "savings bank", "saving", "trust", "trustee", "trust company", or "investment company" unless the department has granted a waiver. This section does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to 12 U.S.C. 1844.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining the person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require.

History: Ap. p. Sec. 29, Ch. 89, L. 1927; re-en. Sec. 6014.33, R.C.M. 1935; amd. Sec. 14, Ch. 431, L. 1975; amd. Sec. 6, Ch. 71, L. 1977; Sec. 5-508, R.C.M. 1947; Ap. p. Sec. 1, Ch. 217, L. 1977; Sec. 5-508.1, R.C.M. 1947; R.C.M. 1947, 5-508, 5-508.1; amd. Sec. 24, Ch. 395, L. 1993.

Cross-References

Injunctions, Title 27, ch. 19.

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Foreign corporations, 32-1-103.

Organization and incorporation — articles of incorporation — articles of agreement, 32-1-301.

Incorporation, 32-1-302.

32-1-403. Penalty for transacting business without certificate. (1) A person, firm, company, partnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings and issuing notes or certificates of deposit for them or advertising that he or it is transacting the business of a bank, savings bank, or trust company or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name or other words indicating that the place or office is the place or office of a bank, savings bank, or trust company or that deposits are received there or payments made on check or that interest is paid on deposits or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting that business and must have received from the department, as provided for in this chapter, a certificate to do a banking business.

(2) A person, firm, company, partnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(3) Upon action brought by the department, the court may issue an injunction restraining a person, firm, company, partnership, or corporation from further violating any provision of this section and may enter a further order or decree as equity and justice require.

(4) A person, firm, company, partnership, or corporation doing any of the things or transacting any of the business defined in this section must transact that business according to the provisions of the Bank Act, and the department may examine the accounts, books, papers, cash, and credits of that person, firm, company, partnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm, company, partnership, or corporation has violated or is violating any provisions of this section.

History: En. Sec. 30, Ch. 89, L. 1927; re-en. Sec. 6014.34, R.C.M. 1935; amd. Sec. 15, Ch. 431, L. 1975; R.C.M. 1947, 5-509.

Cross-References

Injunctions, Title 27, ch. 19.

Examination and supervision by Department, 32-1-211.

Organization and incorporation — articles of incorporation — articles of agreement, 32-1-301.

Incorporation, 32-1-302.

32-1-404 through 32-1-410 reserved.

32-1-411. Extent assets may be pledged. No bank, banker, or bank officer shall, except as otherwise authorized by law, pledge or hypothecate as collateral security for money borrowed its assets in a ratio exceeding 1 ½ times the amount borrowed (except as otherwise authorized by the department).

History: En. Sec. 99, Ch. 89, L. 1927; re-en. Sec. 6014.110, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1026.

Cross-References

Examination and supervision by Department, 32-1-211.

32-1-412. Borrowing money — limitations. (1) Except as provided in subsection (3), a bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. The bills payable and rediscounts of a bank may not be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. Security instruments sold under an agreement to repurchase do not apply to the limit on borrowing contained in this section. The division may prohibit excessive amounts of borrowing structured as a security instrument sold under an agreement to repurchase to a single customer or within the bank. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

(2) Subject to subsections (1) and (3), a bank may not at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

(3) A bank may borrow funds from a federal home loan bank for use in financing home ownership, in financing affordable housing programs, or in interest rate risk management. The division may prevent excessive borrowing by an institution.

History: (1)En. Sec. 110, Ch. 89, L. 1927; re-en. Sec. 6014.121, R.C.M. 1935; amd. Sec. 37, Ch. 431, L. 1975; Sec. 5-1037, R.C.M. 1947; (2)En. Sec. 54, Ch. 89, L. 1927; re-en. Sec. 6014.58, R.C.M. 1935; amd. Sec. 19, Ch. 431, L. 1975; Sec. 5-533, R.C.M. 1947; R.C.M. 1947, 5-533, 5-1037; amd. Sec. 25, Ch. 395, L. 1993.

Cross-References

Amount of capital, 32-1-307.

Pledging building and loan association assets, 32-2-405.

Credit unions — loan limit, 32-3-603.

32-1-413. Borrowing money for capital purposes — status of capital. Notwithstanding any other provision of law, any commercial bank, savings bank, trust company, or investment company, now in existence or which may be hereafter formed, shall have the power to borrow money for capital purposes upon such terms and conditions as may be approved by the department and for this purpose may issue capital notes or debentures therefor, such notes or debentures to be subordinate in right of payment to the payment in full of all deposits of such bank, savings bank, trust company, or investment company. The amount of money so borrowed shall be considered as capital for the purpose of determining the maximum amount of money that may be loaned by such bank, savings bank, trust company, or investment company to any person, partnership, or corporation and for the purpose of determining the maximum amount of money which such bank may borrow and for all other purposes of bank capital as may be required by law.

History: En. Sec. 1, Ch. 16, Ex. L. 1933; re-en. Sec. 6017.1, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1967; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1130; amd. Sec. 16, Ch. 634, L. 1979.

Cross-References

Examination and supervision by Department, 32-1-211.

Amount of capital, 32-1-307.

32-1-414. No certificate of deposit to issue for borrowed money. No bank shall issue its certificate of deposit for the purpose of borrowing money or make partial payments upon any certificate of deposit.

History: En. Sec. 111, Ch. 89, L. 1927; re-en. Sec. 6014.122, R.C.M. 1935; R.C.M. 1947, 5-1038.

32-1-415 through 32-1-419 reserved.

32-1-420. Investment by trust fiduciary in management investment company or investment trust. (1) In the absence of an express prohibition in a trust instrument, a trust company fiduciary or the trust division of a financial institution, whether organized under state or federal law, may acquire and retain, invest, and reinvest fiduciary funds in the securities of or other interests in an open-end or closed-end management investment company or investment trust registered under 15 U.S.C. 80a-1 through 80a-64.

(2) The investments authorized in subsection (1) may be made even if the fiduciary or an affiliate of the fiduciary is providing services to a management investment company or investment trust and is receiving compensation as an investment adviser or manager, sponsor, broker, distributor, custodian, transfer agent, or registrar or for a similar service. The fiduciary shall disclose to all current income beneficiaries of the trust the rate, formula, and method of compensation for the services provided.

History: En. Sec. 1, Ch. 289, L. 1993.

Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-421. Investment of capital of savings banks. (1) The term "savings bank" as used in this section means any bank organized to do the business specified in 32-1-106.

(2) (a) At least one-half of the paid-in capital of a savings bank and one-half of the whole amount deposited in the savings bank must be invested in bonds or other securities of the United States or any of the states of the United States or any county, city, town, or school district of this state on which interest is regularly payable or federal land bank bonds or loaned on unencumbered real estate worth at least double the amount to be secured.

(b) The remainder may be invested in bonds or securities listed in subsection (2)(a) or in approved personal securities. However, a loan may not be made on personal securities of less than two responsible persons or collateral security to be approved by the directors, and a loan upon personal security may not be made to any person or partnership to an amount exceeding $10,000.

(c) Investments in United States government obligations permitted under subsection (2)(a) or (2)(b) may be made either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(3) A president, vice president, director, or other officer or servant of a savings bank may not directly or indirectly borrow any of the funds of the bank or of its deposits or in any manner use the same in his private affairs or business. A director may not receive any pay, salary, or emolument until the interest as the directors have determined to allow depositors has been provided for in accordance with the regulations of the corporation.

(4) The real estate that the corporation may lawfully purchase, hold, and convey is the real estate that is:

(a) necessary for the proper transaction of its business, not exceeding in value $50,000;

(b) mortgaged to it in good faith for money loaned pursuant to this chapter or given as security for money loaned or advanced;

(c) purchased at the sale on judgment or decree obtained or rendered on money loaned or advanced.

(5) Savings banks organized under the provisions of this chapter may not purchase, hold, or convey real estate in any other case or for any other purpose than is specified in subsection (4) and may not buy or sell any personal property, except such as may be necessary for the proper transaction of its business or as may have been pledged, mortgaged, or assigned to it to secure money loaned or advanced.

History: En. Sec. 24, Ch. 89, L. 1927; re-en. Sec. 6014.28, R.C.M. 1935; R.C.M. 1947, 5-503; amd. Sec. 3, Ch. 137, L. 1989.

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

Municipal general obligation bonds, Title 7, ch. 7, part 42.

Investments authorized — certain government-guaranteed bonds, 7-15-4505.

Bond Validating Act, Title 17, ch. 5, part 2.

Economic development bonds — legal investments, 17-5-1525.

Municipal Finance Consolidation Act of 1983 bonds — legal investments, 17-5-1628.

School bonds, Title 20, ch. 9, part 4.

Contracts, Title 28, ch. 2, 3.

Mortgages of real property, Title 71, ch. 1, part 2.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

32-1-422. Restriction on investment in corporate stock — rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank, without limitation of amount;

(c) shares of stock in a Montana capital company or a Montana small business investment capital company within limits prescribed by the Montana Capital Company Act; and

(d) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation;

(d) the federal home loan bank; and

(e) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined in 35-1-113(9), that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency.

History: **En. Sec. 39, Ch. 89, L. 1927; re-en. Sec. 6014.43, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1973; R.C.M. 1947, 5-518; amd. Sec. 1, Ch. 259, L. 1983; amd. Sec. 3, Ch. 199, L. 1989; (4) En. Sec. 6, Ch. 199, L. 1989; amd. Sec. 26, Ch. 395, L. 1993; amd. Sec. 4, Ch. 100, L. 1999; amd. Sec. 1, Ch. 410, L. 1999.**

Compiler's Comments

1999 Amendments — Composite Section: Chapter 100 inserted (2)(d) allowing a bank to acquire and hold for its own account shares of stock or financial interests in an affiliate or subsidiary the business activities of which are limited to those allowed by law for a bank; inserted (3)(d) allowing a bank to invest in the stock of the federal home loan bank; inserted (4) allowing a bank to invest an amount allowed by department rule if the investment serves primarily to promote the public welfare or, with the department's approval, invest in an entity that makes investments for public welfare purposes; in (5) at end inserted sentence providing that the rules relating to investments allowed by subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 410 in (2)(c) substituted "a Montana small business investment capital company" for "the Montana small business investment capital company". Amendment effective April 21, 1999.

Applicability: Section 19, Ch. 410, L. 1999, provided: "[This act] applies to any capital company or small business investment capital company operating prior to or on or organized after [the effective date of this act]." Effective April 21, 1999.

Cross-References

Rule defined, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

U.C.C. — investment securities, Title 30, ch. 8.

Banks allowed to join federal reserve bank, 32-1-373.

Business corporations — shares, Title 35, ch. 1, part 6.

Montana Capital Company Act, Title 90, ch. 8.

32-1-423. Real estate that banks may purchase, hold, or convey. (1) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate that:

(a) is for its accommodation in the transaction of its business, but it may not invest an amount exceeding 100% of its paid-up capital and surplus in the lot and building in which the business of the company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business if property held for future use as a bank office site is held pursuant to a business plan adopted by the directors of the bank;

(b) is mortgaged to it in good faith by way of security for loans previously made or money due to the bank;

(c) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) may not be held longer than 5 years from the date of acquisition, unless special written permission is granted by the department. The real estate must be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title.

History: **En. Sec. 25, Ch. 89, L. 1927; re-en. Sec. 6014.29, R.C.M. 1935; amd. Sec. 12, Ch. 431, L. 1975; amd. Sec. 4, Ch. 71, L. 1977; R.C.M. 1947, 5-504; amd. Sec. 27, Ch. 395, L. 1993; amd. Sec. 15, Ch. 117, L. 1997.**

Cross-References

Definitions and kinds of estates in real property, Title 70, ch. 15.

Mortgages, Title 71, ch. 1.

32-1-424. Investments of financial institutions. (1) Notwithstanding other provisions of the law, it is lawful for a bank, trust company, investment company or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in:

(a) debentures issued by the federal housing administrator and in obligations of national mortgage associations; and

(b) United States government obligations, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(2) The department shall publish a list of the permissible type of investments in United States government obligations as provided in subsection (1).

History: (1), (2)En. Sec. 26, Ch. 89, L. 1927; re-en. Sec. 6014.30, R.C.M. 1935; Sec. 5-505, R.C.M. 1947; (3)En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; Sec. 35-142, R.C.M. 1947; R.C.M. 1947, 5-505, 35-142(part); amd. Sec. 1, Ch. 36, L. 1979; amd. Sec. 4, Ch. 137, L. 1989; amd. Sec. 28, Ch. 395, L. 1993.

Cross-References

Security for deposits of public funds, 17-6-103.

U.C.C. — investment securities, Title 30, ch. 8.

Building and loan associations — investments, 32-2-406.

Credit unions — investment of funds, 32-3-701.

Mortgages, Title 71, ch. 1.

32-1-425. Definitions. For the purposes of 32-1-426 and 32-1-427, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Fiduciary" means a trustee under any trust, expressed, implied, resulting in, or constructive; executor; administrator; guardian; committee; conservator; curator; tutor; custodian; nominee; receiver; trustee in bankruptcy; assignee for the benefit of creditors; partner; agent; officer of any corporation, public or private; public officer; or any other person acting in a fiduciary capacity for any person, trust, or estate.

(2) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

History: En. 5-1601 by Sec. 3, Ch. 278, L. 1977; R.C.M. 1947, 5-1601.

Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

Trust Code, Title 72, ch. 33 through 36.

32-1-426. Deposit of securities in central depository. (1) Notwithstanding any other provision of law, any fiduciary, as defined in 32-1-425, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in 30-8-112. When the securities are deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited in the clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian, as managing agent, or a custodian for a fiduciary must at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities. A bank or trust company depositing securities pursuant to this section is subject to rules which in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company in the clearing corporation for the account of the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

(2) This section applies to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not the fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of the clearing corporation.

History: En. 5-1602 by Sec. 4, Ch. 278, L. 1977; R.C.M. 1947, 5-1602; amd. Sec. 87, Ch. 536, L. 1997.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

Trust administration, Title 72, ch. 34.

32-1-427. Fiduciaries — deposit of securities with a federal reserve bank. (1) Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary as defined in 32-1-425 and any bank or trust company when holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules with respect to the making and maintenance of such deposit as, in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency may from time to time adopt. The records of the bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of and other interests in the securities credited to such account may be transferred by entries on the books of the federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company with the federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the federal reserve bank for its account as such fiduciary.

(2) This section shall apply to all fiduciaries and custodians for fiduciaries acting on July 1, 1977, or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

History: En. 5-1603 by Sec. 5, Ch. 278, L. 1977; R.C.M. 1947, 5-1603.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Banks allowed to join federal reserve bank, 32-1-373.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

Trust administration, Title 72, ch. 34.

32-1-428 reserved.

32-1-429. Insurance activities. (1) A bank or a bank's subsidiary or affiliate may:

(a) except title insurance, sell insurance of all types, including annuities, credit life insurance, and disability insurance; and

(b) act as an insurance producer, adjuster, consultant, or administrator as defined in Title 33, chapter 17.

(2) A bank or a bank's subsidiary or affiliate that engages in insurance activities authorized in subsection (1) is subject to the provisions of Title 33.

History: En. Sec. 7, Ch. 100, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

32-1-430. Authority of state banks to make real estate loans. A bank in this state has from time to time the same authority to make loans upon real estate which may be given by acts of congress or the federal reserve system to national banks or bank members of the federal reserve system.

History: En. Sec. 27, Ch. 89, L. 1927; re-en. Sec. 6014.31, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959; amd. Sec. 13, Ch. 431, L. 1975; amd. Sec. 5, Ch. 71, L. 1977; R.C.M. 1947, 5-506(part).

Cross-References

Loan of money — what constitutes, 31-1-101.

National bank powers extended to state banks, 32-1-362.

Certificate of change to national bank, 32-1-365.

Mortgages, Title 71, ch. 1.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-431. Repealed. Sec. 50, Ch. 395, L. 1993.

History: En. Sec. 27, Ch. 89, L. 1927; re-en. Sec. 6014.31, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959; amd. Sec. 13, Ch. 431, L. 1975; amd. Sec. 5, Ch. 71, L. 1977; R.C.M. 1947, 5-506(part).

32-1-432. Limitations on loans — rulemaking. (1) (a) The total loans or extensions of credit to a person, partnership, or corporation by a bank, including loans to a partnership and to the members of the partnership, may not exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it and the obligations of the United States, general obligations of any state or of any political subdivision, or obligations issued under authority of the Federal Farm Loan Act may not be considered as money borrowed.

(c) The limitations imposed on total loans and extensions of credit by this section do not apply to loans and investments secured by obligations of the United States having a current market value of 100% of the amount loaned or invested.

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the members of a firm, partnership, or unincorporated association to the loaning bank must be included in the liabilities of the firm, partnership, or unincorporated association. The portion of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally responsible must be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans or extensions of credit to a limited partner of a limited partnership, the portions of the liabilities of the limited partnership for which the limited partner is free from liability must be excluded.

(3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the limits and within the time it prescribes.

(4) The limitations of this section do not apply to the extent that the loan or extension of credit is secured by pledged deposits in the lending bank.

(5) The limitations of this section do not apply to a loan of funds or an extension of credit made by a bank to another bank if the term of the loan or extension of credit does not exceed 2 business days.

(6) The limitations of this section do not apply to the extent that a loan is covered by a guaranty or by commitments or agreements to take over or purchase the loan made by an agency or board of the state of Montana authorized by law to provide the guaranties, commitments, or agreements.

(7) (a) A state-chartered bank may be exempted from the limitations of this section by applying to the department for a written waiver stipulating that the bank will be subject to the limitations imposed on national banks under 12 U.S.C. 84 and the regulations of the office of the comptroller of the currency.

(b) A written waiver provided to a state-chartered bank in accordance with subsection (7)(a) may not be changed by the bank or revoked by the department for 2 years from the date of issue or for a different period determined by the department by rule.

(8) The department may adopt rules to carry out the purposes of this section.

(9) For purposes of this section, the terms "loan" and "extension of credit" include all direct or indirect advances of funds to a person on the basis of an obligation of the person to repay the funds. The terms also include a liability of a state-chartered bank to advance funds to or on behalf of a person pursuant to a contractual commitment. The department may adopt a rule differentiating between discretionary and nondiscretionary contractual commitments.

History: En. Sec. 44, Ch. 89, L. 1927; re-en. Sec. 6014.48, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1943; amd. Sec. 1, Ch. 6, L. 1969; amd. Sec. 1, Ch. 118, L. 1973; amd. Sec. 17, Ch. 431, L. 1975; R.C.M. 1947, 5-523; amd. Sec. 1, Ch. 258, L. 1983; amd. Sec. 1, Ch. 315, L. 1985; amd. Sec. 29, Ch. 395, L. 1993; amd. Sec. 5, Ch. 100, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 100 inserted (7) allowing a state-chartered bank to apply to the department for a waiver of this section's limitations, which would stipulate that the bank is subject to the limitations in 12 U.S.C. 84 and the regulations of the office of the comptroller of the currency, and providing that the waiver is good for 2 years or a different period determined by department rule; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

Loan of money — what constitutes, 31-1-101.

32-1-433. Investment in certain securities — rulemaking authority. (1) A bank may purchase, sell, underwrite, and hold investment securities that are obligations in the form of bonds, notes, or debentures, as provided in rules adopted by the department. A bank may hold without limit investment securities that are general obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, or general obligations of any state.

(2) The department shall adopt rules to implement this section.

History: En. Sec. 38, Ch. 89, L. 1927; re-en. Sec. 6014.42, R.C.M. 1935; amd. Sec. 7, Ch. 71, L. 1977; R.C.M. 1947, 5-517; amd. Sec. 1, Ch. 535, L. 1983; amd. Sec. 4, Ch. 199, L. 1989; (2) En. Sec. 6, Ch. 199, L. 1989.

Cross-References

Rule defined, 2-4-102.

Adoption and publication of rules, Title 2. ch. 4, part 3.

County general obligation bonds, Title 7, ch. 7, part 22.

Municipal general obligation bonds, Title 7, ch. 7, part 42.

Bond Validating Act, Title 17, ch. 5, part 2.

Economic development bonds — procedure prior to financing projects, 17-5-1526.

Economic development bonds — procedure prior to financing major projects, 17-5-1527.

School bonds, Title 20, ch. 9, part 4.

Montana Agricultural Loan Authority Act — loan agreements, 80-12-201.

32-1-434. Financial institutions authorized to obtain insurance and make loans when approved by federal housing administrator. Notwithstanding any other provisions of the law of this state restricting the amount of any loan in relation to the value of the real estate and/or restricting the term of any such loan and/or restricting the rate of interest on any such loan, it shall be lawful for any corporation, bank, trust company, insurance company, investment company, and any other financial institution which has been approved as a mortgagee by the federal housing administrator to obtain insurance and to make such loans secured by real estate as the federal housing administrator insures or makes a commitment to insure.

History: En. Sec. 1, Ch. 8, L. 1935; re-en. Sec. 6018.1, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1937; R.C.M. 1947, 5-1131.

Cross-References

Insurance on deposits of public funds, 17-6-102.

32-1-435. Federal housing securities eligible collateral. Wherever collateral must or may be furnished by any depository in the state of Montana as security for the deposit of any funds whatsoever or wherever collateral must or may be deposited with any official of the state of Montana pursuant to any statute of this state, mortgages insured and debentures issued by the federal housing administrator shall be considered eligible collateral for such purposes.

History: En. Sec. 2, Ch. 25, L. 1937; R.C.M. 1947, 5-1132.

Cross-References

Security for deposits of public funds, 17-6-103.

32-1-436. Repealed. Sec. 2, Ch. 9, L. 1983.

History: En. Sec. 48, Ch. 89, L. 1927; re-en. Sec. 6014.52, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1969; amd. Sec. 1, Ch. 196, L. 1975; R.C.M. 1947, 5-527.

32-1-437. Acceptance and issuance of drafts — rulemaking authority. (1) A bank organized and existing under the laws of Montana may accept for payment at a future date drafts drawn upon it by its customers authorizing the holders of the drafts to draw drafts upon it or its correspondents at sight or on time if the total amount of drafts accepted for any one person, firm, or corporation does not at any one time exceed 20% of the capital and surplus of the accepting or issuing bank.

(2) The department may adopt rules to implement this section.

History: En. Sec. 74, Ch. 89, L. 1927; re-en. Sec. 6014.85, R.C.M. 1935; amd. Sec. 11-103, Ch. 264, L. 1963; R.C.M. 1947, 5-1001; amd. Sec. 5, Ch. 199, L. 1989; (2) En. Sec. 6, Ch. 199, L. 1989; amd. Sec. 10, Ch. 265, L. 1995.

Cross-References

Rule defined, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

U.C.C. — bank deposits and collections, Title 30, ch. 4.

32-1-438 and 32-1-439 reserved.

32-1-440. Financial institution's responsibility to provide notice when funds become available for withdrawal. (1) A depository bank shall provide clear and conspicuous written notice of the time periods and exceptions to the periods concerning when funds become available for withdrawal as of right on deposit by check or similar instrument in the customer's deposit account. The notice must state the cutoff hour, if any, fixed by the financial institution after which an item is treated as being received at the opening of the next business day.

(2) This notice must be:

(a) provided to a potential customer prior to opening a deposit account; and

(b) posted in a conspicuous manner at each financial institution, automated teller machine location, or other device that accepts deposits.

(3) A deposit slip, envelope, or any other printed form furnished by the depository financial institution for use in connection with deposits must contain the following notice, printed in a conspicuous manner: "Your deposit may not be available for immediate withdrawal. Consult posted notices for further information.

History: En. Sec. 1, Ch. 491, L. 1985; amd. Sec. 67, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in (2)(b) substituted "automated teller machine" for "automatic teller machine"; deleted former (2)(b) that read: "(b) mailed to each of the financial institution's present customers on or before December 31, 1985"; and made minor changes in style. Amendment effective March 15, 1999.

Cross-References

Bank, 30-1-201.

Customer, 30-4-104.

Item, 30-4-104.

U.C.C. — depositary bank defined, 30-4-105.

When certain credits become available for withdrawal, 30-4-213.

32-1-441. Certified checks. (1) Whenever a check drawn on any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm, or corporation drawing the same.

(2) It shall be unlawful for any officer or employee of any bank to certify any check drawn upon such bank, unless at the time such check is certified the person, firm, or corporation drawing the check has on deposit with the bank an amount of money subject to the payment of such check equal to the amount specified in such check.

(3) Any officer or employee of any bank who shall willfully violate the provisions of this section or shall resort to any device or receive any fictitious obligation, directly or indirectly, in order to evade the provisions hereof shall be guilty of felony.

History: En. Sec. 47, Ch. 89, L. 1927; re-en. Sec. 6014.51, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1947; R.C.M. 1947, 5-526.

Cross-References

False statements and entries considered felony, 32-1-236.

Felony charges — suspension or prohibition, 32-1-908.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

Felony — when no penalty specified, 46-18-213.

32-1-442. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 49, Ch. 89, L. 1927; re-en. Sec. 6014.53, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1967; R.C.M. 1947, 5-528.

32-1-443. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 50, Ch. 89, L. 1927; re-en. Sec. 6014.54, R.C.M. 1935; R.C.M. 1947, 5-529.

32-1-444. Deposit in name of minor. Whenever any deposit shall be made in any bank by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the deposit was made, and the receipt of such minor is a sufficient release or discharge for such deposit to the bank.

History: En. Sec. 51, Ch. 89, L. 1927; re-en. Sec. 6014.55, R.C.M. 1935; amd. Sec. 9, Ch. 71, L. 1977; R.C.M. 1947, 5-530.

Cross-References

Parental control over property of child, 40-6-232.

Periods of minority — how calculated, 41-1-102.

Minor cannot disaffirm certain obligations, 41-1-306.

Montana Uniform Transfers to Minors Act, Title 72, ch. 26.

32-1-445. Demand or time deposits. Demand deposits, within the meaning of this chapter, shall comprise all deposits payable within 7 days, and time deposits shall comprise all deposits payable after 7 days and all savings accounts and certificates of deposit which are subject to not less than 7 days' notice before payment.

History: En. Sec. 52, Ch. 89, L. 1927; re-en. Sec. 6014.56, R.C.M. 1935; R.C.M. 1947, 5-531; amd. Sec. 1, Ch. 75, L. 1985.

Cross-References

Demand deposits defined, 32-1-109.

Time deposits defined, 32-1-109.

32-1-446. Safe deposit department. A bank or a foreign capital depository may conduct a safe deposit department. The liability of any bank or foreign capital depository for the safekeeping and protection of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to the renter of a box at the time of the rental. However, the obligation of the bank or foreign capital depository is limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes.

History: En. Sec. 35, Ch. 89, L. 1927; re-en. Sec. 6014.39, R.C.M. 1935; R.C.M. 1947, 5-514; amd. Sec. 30, Ch. 395, L. 1993; amd. Sec. 78, Ch. 382, L. 1997.

Cross-References

Safe deposit box — joint tenancy, 70-1-308.

32-1-447. Giving security for deposit prohibited — exceptions. It is unlawful for any bank to pledge, mortgage, or hypothecate to any depositor any of its real or personal property as security for any deposit, and any pledge, mortgage, or hypothecation made in violation thereof is unenforceable. This provision does not apply to any deposits of money of the United States, public funds deposited in accordance with the provisions of any depository act of this state or the United States, or bankruptcy estate funds or deposits, including deposits of receivers or trustees in bankruptcy, deposited under the direction and supervision of a court of record of the state of Montana or of the United States.

History: **En. Sec. 112, Ch. 89, L. 1927; re-en. Sec. 6014.123, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1941; amd. Sec. 22, Ch. 71, L. 1977; R.C.M. 1947, 5-1039.**

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Security for deposits of public funds, 17-6-103.

Receivers — investment of funds, 27-20-303.

Claims — order of payment — priorities, 32-1-534.

32-1-448. Payments to foreign administrator. Any bank doing business in this state may pay any money remaining to the credit of a deceased depositor or deliver any personal property in its possession belonging to such deceased depositor to an administrator or executor of such depositor duly appointed and qualified in another state, provided no demand therefor shall have been previously made by an administrator or executor appointed in any county of this state, and such payment shall discharge the bank making the same from its liability on account of such deposit.

History: **En. Sec. 104, Ch. 89, L. 1927; re-en. Sec. 6014.115, R.C.M. 1935; R.C.M. 1947, 5-1031.**

Cross-References

Payment of debt and delivery of property to foreign representative, 72-4-306.

32-1-449 and 32-1-450 reserved.

32-1-451. Statement of capital, resources, and liabilities. No bank or officer thereof shall advertise in any manner or publish any statement of the capital authorized or subscribed unless it or he advertises and publishes in connection therewith the amount of capital actually paid up. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately.

History: **En. Sec. 32, Ch. 89, L. 1927; re-en. Sec. 6014.36, R.C.M. 1935; R.C.M. 1947, 5-511.**

Cross-References

Amount of capital, 32-1-307.

32-1-452. Dividends, surplus, losses, and bad debts. (1) The directors of a bank may, at certain times and in the manner as its bylaws prescribe, declare and pay dividends to the stockholders of so much of the net undivided profits of the banks as may be appropriated for that purpose, but every bank shall, before declaring any dividend, carry at least 25% of its net earnings for the period covered by the dividend to its surplus, until the surplus is 50% of its paid-up capital stock. The whole or any part of the surplus may at any time be converted into paid-in capital, but the surplus must be restored as provided in this subsection until it amounts to 50% of the aggregate paid-up capital stock. A larger surplus may be created.

(2) A dividend larger than the previous 2 years' net earnings may not be declared without giving notice to the division.

(3) Losses sustained by a bank in excess of its undivided profits may be charged to and paid from the surplus, but the surplus must be restored in the manner provided in subsection (1) in the amount required by this chapter.

History: En. Sec. 34, Ch. 89, L. 1927; re-en. Sec. 6014.38, R.C.M. 1935; R.C.M. 1947, 5-513; amd. Sec. 31, Ch. 395, L. 1993.

Cross-References

Report of declaration of dividend, 32-1-232.

Conversion of surplus and undivided profits to capital stock, 32-1-340.

32-1-453. Calculation of profits. Interest or commissions unpaid, although due or accrued, on debts owing to any bank may not be included in calculation of its profits, unless the bank keeps its books on a complete accrual basis in which event the bank shall show on its books accrued interest receivable on notes, bonds, and other investments, unless the same is past due, and shall also carry on its books accrued interest, taxes, and expenses payable.

History: En. Sec. 46, Ch. 89, L. 1927; amd. Sec. 1, Ch. 64, L. 1931; re-en. Sec. 6014.50, R.C.M. 1935; R.C.M. 1947, 5-525; amd. Sec. 138, Ch. 42, L. 1997.

Cross-References

Conversion of surplus and undivided profits to capital stock, 32-1-340.

32-1-454. Past-due and doubtful paper. Every bank carrying any bad debt or a debt of doubtful value as an asset shall upon the request or demand of the department collect the same or put it in good bankable condition or charge it out of its books.

History: En. Sec. 102, Ch. 89, L. 1927; re-en. Sec. 6014.113, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1029.

Cross-References

U.C.C. — negotiable instruments, Title 30, ch. 3.

32-1-455. Reserve requirements. (1) A bank, except a reserve bank, shall maintain at all times a reserve of that percentage of its deposit liabilities as required by the appropriate federal regulator.

(2) The department may establish reserve requirements if the federal regulator discontinues reserve requirements.

(3) A bank approved by the department as a reserve bank shall maintain at all times a reserve as the department requires by rule.

(4) A solvent bank of good repute having a full paid-up capital and surplus as the department requires by rule and doing business in this state or any other state may be designated by the department as a reserve agent for Montana banking institutions. The approval or designation may be withdrawn or withheld at any time by the department for cause.

(5) A bank whose reserve drops below the legal requirements shall report the matter to the department immediately and as often as the department asks for a report.

(6) When the reserve of a bank falls below the legal requirements, the bank may not increase its loans or discounts except by discounting or purchasing bills of exchange payable at sight or on demand, and the department shall notify a bank whose reserve may be below the amount required to make good the reserve.

(7) In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks must be used as the basis for ascertaining the deposit liability to banks against which reserves are carried.

(8) Compliance by member banks with the federal reserve banking laws, rules, and regulations is compliance with the reserve requirements and conditions of this

chapter and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this chapter.

History: (1) thru (4), (6) thru (8)En. Sec. 53, Ch. 89, L. 1927; re-en. Sec. 6014.57, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1967; amd. Sec. 18, Ch. 431, L. 1975; Sec. 5-532, R.C.M. 1947; (5)En. Sec. 103, Ch. 89, L. 1927; re-en. Sec. 6014.114, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; Sec. 5-1030, R.C.M. 1947; R.C.M. 1947, 5-532, 5-1030; amd. Sec. 32, Ch. 395, L. 1993.

Cross-References

Examination and supervision by department, 32-1-211.

Banks allowed to join federal reserve bank, 32-1-373.

32-1-456 through 32-1-460 reserved.

32-1-461. Bonding of employees. (1) The board of directors of a bank or foreign capital depository shall require bonding for all officers and employees of the bank or foreign capital depository whose duty includes the handling of money, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the bank and its customers.

(2) The board of directors shall by order entered upon the minute books of the board designate the officers and employees to be bonded and the amount of bonds to be given. Action as to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department, and the bonds must be in a form provided or approved by the department.

(3) The bonds must be approved by the president of the bank or the chief executive officer of the foreign capital depository, and the president's or executive officer's action must be reported to the board of directors.

(4) All bonds required by this section must be kept in the custody of the bank or foreign capital depository subject to inspection by examiners from the department. However, as far as possible, they may not be placed in the custody of the officer or employee for whom the bond is given.

History: En. Sec. 105, Ch. 89, L. 1927; amd. Sec. 3, Ch. 145, L. 1931; re-en. Sec. 6014.116, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 21, Ch. 71, L. 1977; R.C.M. 1947, 5-1032; amd. Sec. 79, Ch. 382, L. 1997.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Examination and supervision by Department, 32-1-211.

Selection of officers and employees — meetings and minutes, 32-1-325.

32-1-462. Persons previously convicted under banking laws — bank or depository employment. It is unlawful for a person who has been convicted of a violation of the banking laws of any state or nation to accept employment in a bank or a foreign capital depository in this state without first stating the relevant facts to the directors of the bank or foreign capital depository. A person who has been convicted of a banking law violation may not be employed in a bank or a foreign capital depository without the approval of the department, granted in writing after a full consideration of the facts.

History: En. Sec. 120, Ch. 89, L. 1927; re-en. Sec. 6014.130, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1046; amd. Sec. 80, Ch. 382, L. 1997.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Rules adopted by Board — new banks, 32-1-203.

Examination and supervision by Department, 32-1-211.

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

Selection of officers and employees — meetings and minutes, 32-1-325.

Violation of notice or final order — penalties, 32-1-921.

32-1-463. Sale of securities by officer to bank. (1) No director, officer, employee, or controlling stockholder of any bank shall, directly or indirectly, for his own account, for himself, or as the partner or agent of others sell or transfer or cause to be sold or transferred to the bank of which he is a director, officer, employee, or controlling stockholder any note or bond secured by any mortgage or trust deed on real estate or any contract arising from the sale of real estate, in which such director, officer, employee, or controlling stockholder is personally or financially interested, without a vote of the majority of the board of such bank, duly noted upon the minutes of the meeting at which such transaction is decided upon, which minutes shall be signed by a majority of the board.

(2) Any director, officer, employee, or controlling stockholder of any bank who knowingly violates or consents to the violation of this provision shall be guilty of a felony.

History: En. Sec. 37, Ch. 89, L. 1927; re-en. Sec. 6014.41, R.C.M. 1935; R.C.M. 1947, 5-516.

Cross-References

Selection of officers and employees — meetings and minutes, 32-1-325.

Felony charges — suspension or prohibition, 32-1-908.

32-1-464. Fraud by director, officer, agent, or employee. A director, executive officer, agent, or employee of a bank or a foreign capital depository is guilty of a felony if that person:

(1) knowingly receives or takes possession of any bank or foreign capital depository property, except in payment for a just demand, and with intent to defraud:

(a) fails to make or to cause or direct to be made a full and true entry of the receipt or possession in its books and account; or

(b) concurs in failing to make any material entry in its books and account;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement that is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that bank or foreign capital depository as required by law, to exhibit them, or allow them to be inspected and extracts to be taken from them by the department.

History: En. Sec. 40, Ch. 89, L. 1927; re-en. Sec. 6014.44, R.C.M. 1935; amd. Sec. 16, Ch. 431, L. 1975; amd. Sec. 8, Ch. 71, L. 1977; R.C.M. 1947, 5-519; amd. Sec. 2, Ch. 36, L. 1979; amd. Sec. 81, Ch. 382, L. 1997.

Cross-References

Kinds of fraud, 28-2-404.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Examination and supervision by Department, 32-1-211.

Special reports to Department, 32-1-233.

False statements and entries considered felony, 32-1-236.

Selection of officers and employees — meetings and minutes, 32-1-325.

Deposits in insolvent bank, 32-1-504.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Felony charges — suspension or prohibition, 32-1-908.

Criminal law — knowingly defined, 45-2-101.

Felony defined, 45-2-101.

Felony — when no penalty specified, 46-18-213.

32-1-465. Limit on loans to officer, director, or principal shareholder. (1) Except as provided in subsection (2), a bank may not extend credit to an officer, director, or principal shareholder unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all officers, directors, or principal shareholders, does not exceed the bank's unimpaired capital and unimpaired surplus.

(2) A bank with deposits of less than $100 million may by resolution of its board of directors increase the general limit in subsection (1) to a limit that does not exceed two times the bank's unimpaired capital and unimpaired surplus if:

(a) the board of directors determines that a higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to officers, directors, and principal shareholders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;

(b) the resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to officers, directors, and principal shareholders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(c) the bank has submitted the resolution to the department; and

(d) the bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements established by the department.

History: En. Sec. 41, Ch. 89, L. 1927; re-en. Sec. 6014.45, R.C.M. 1935; R.C.M. 1947, 5-520; amd. Sec. 3, Ch. 36, L. 1979; amd. Sec. 33, Ch. 395, L. 1993; amd. Sec. 11, Ch. 265, L. 1995.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Theft, 45-6-301.

Issuing bad check, 45-6-316.

Misdemeanor — when no penalty specified, 46-18-212.

32-1-466. Purchase of obligation of bank by officer. No director, officer, agent, or other employee of any bank shall, directly or indirectly, for his own personal benefit, purchase or sell or be interested in the purchase or sale of any obligation of said bank or of any of the assets of said bank for a sum less than shall appear upon the face of the obligation or obligations so purchased or sold. Every person violating the provisions of this section shall, in addition to the general penalties of this chapter, forfeit to the state twice the nominal amount or face value of such obligations or assets so purchased or sold.

History: En. Sec. 43, Ch. 89, L. 1927; re-en. Sec. 6014.47, R.C.M. 1935; R.C.M. 1947, 5-522.

Cross-References

Punishment, 32-1-110.

Purchase or loan of own capital stock prohibited, 32-1-335.

32-1-467. Loans to managing officer. (1) A bank may extend credit to a managing officer of the bank:

(a) in any amount to finance the education of the managing officer's children;

(b) in any amount to finance the purchase, construction, maintenance, or improvement of a residence of the managing officer if the extension of credit is secured by a first lien on the residence and the residence is:

(i) owned by the managing officer; or

(ii) expected to be owned by the managing officer after the extension of credit; and

(c) for any other purpose not specified in subsections (1)(a) and (1)(b) if the aggregate amount of loans to that individual under this subsection (1) does not exceed at any one time the greater of 2.5% of the bank's capital and unimpaired surplus or $25,000. However, in no event may the aggregate amount of loans to the individual exceed $100,000.

(2) The department may adopt rules to address loans made before October 1, 1993, and to define capital and unimpaired surplus for purposes of 32-1-465 and this section.

History: **En. Sec. 45, Ch. 89, L. 1927; re-en. Sec. 6014.49, R.C.M. 1935; R.C.M. 1947, 5-524; amd. Sec. 34, Ch. 395, L. 1993; amd. Sec. 1, Ch. 17, Sp. L. November 1993.**

Cross-References

Loan of money — what constitutes, 31-1-101.

Deceptive practices, 45-6-317.

32-1-468. Removal of directors, officers, or employees. A director, officer, or employee of a bank or foreign capital depository who is found by the department, after examination, to be negligent, dishonest, reckless, or incompetent must be removed from office by the board of directors of the bank or depository on the written order of the department. If the directors neglect or refuse to remove the director, officer, or employee and any losses accrue to the bank by reason of the negligence, dishonesty, recklessness, or incompetency of the director, officer, or employee, the written order of the department is conclusive evidence of the negligence of the directors failing to act as provided in this section in any action brought against them by a depositor or creditor for recovery of losses.

History: **En. Sec. 109, Ch. 89, L. 1927; re-en. Sec. 6014.120, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1036; amd. Sec. 82, Ch. 382, L. 1997.**

Cross-References

Negligence, 27-1-701, 27-1-702.

Removal of directors or officers of financial institutions, Title 32, ch. 1, part 9.

32-1-469 and 32-1-470 reserved.

32-1-471. Penalty for unlawful hypothecation of property received. Any officer or employee of any bank doing business in this state who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges, or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into his hands or into the possession of the bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, is guilty of theft and upon conviction thereof shall be punished as for other felonies.

History: **En. Sec. 113, Ch. 89, L. 1927; re-en. Sec. 6014.124, R.C.M. 1935; amd. Sec. 42, Ch. 359, L. 1977; R.C.M. 1947, 5-1040.**

Cross-References

Theft, 45-6-301.

Felony — when no penalty specified, 46-18-213.

32-1-472. Concealing actions from directors. Any officer or employee of any bank who intentionally conceals from the directors of such corporation, or committee thereof where the directors have delegated authority to a committee to pass on loans and discounts, any discount or loan made by and in behalf of the corporation or from its assets between the regular meetings of its board of directors or committee, the purchase of any security, the sale of any of its securities, or any guarantee, repurchase agreement, or any other agreement whereby the corporation is obligated, during the same period, is guilty of a misdemeanor and on conviction must be imprisoned in the county jail for not more than 12 months for each offense and may also be fined not more than $500, at the discretion of the court.

History: **En. Sec. 114, Ch. 89, L. 1927; re-en. Sec. 6014.125, R.C.M. 1935; R.C.M. 1947, 5-1041.**

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-1-473. Theft of funds by directors, officers, or employees. A director, officer, or employee of a bank or foreign capital depository who fraudulently appropriates or abstracts or misapplies any of the money, funds, credits, or property of the bank or depository when owned by it or held in trust or who issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent to injure or defraud the bank or depository or any person or corporation or to deceive any officer of the bank or depository, any other person, or anyone appointed to examine the affairs of the bank or depository or any other person who with like intent, aids or abets any director, officer, or employee in the violation of this section is guilty of theft and upon conviction shall be imprisoned in the state prison for a period of not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. Sec. 117, Ch. 89, L. 1927; re-en. Sec. 6014.128, R.C.M. 1935; amd. Sec. 43, Ch. 359, L. 1977; R.C.M. 1947, 5-1044; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 83, Ch. 382, L. 1997.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Felony defined, 45-2-101.

Theft, 45-6-301.

32-1-474. False statement to obtain loan. Whoever shall make any statement, knowing it to be false, for the purpose of obtaining for himself or for any other person, firm, corporation, or association a loan of money from any bank or for the purpose of gaining an extension of time of payment of any debt due such bank shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 1 year, or both.

History: En. Sec. 118, Ch. 89, L. 1927; re-en. Sec. 6014.129, R.C.M. 1935; R.C.M. 1947, 5-1045.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Misdemeanor defined, 45-2-101.

Deceptive practices, 45-6-317.

32-1-475 through 32-1-480 reserved.

32-1-481. Bank holidays. In addition to emergency closings authorized by 32-1-561 through 32-1-565, a bank in the state of Montana may remain closed and refrain from doing business on those legal holidays designated in 1-1-216.

History: En. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R.C.M. 1921; Cal. Pol. C. Secs. 10-11; re-en. Sec. 10, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd. Sec. 1, Ch. 16, L. 1974; R.C.M. 1947, 19-107(part); amd. Sec. 1, Ch. 264, L. 1979; amd. Sec. 1, Ch. 435, L. 1983.

32-1-482. Transaction on holidays. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this state because done or performed during any time other than regular banking hours or on a legal holiday, provided that nothing shall be construed herein to compel any bank in this state, which by law or custom is entitled to close at 12 noon on any Saturday or for the whole or part of any legal holiday, to keep open for transaction of business or to perform any of the acts or transactions aforesaid on any Saturday after such hour or on any legal holiday except at its option.

History: En. Sec. 115, Ch. 89, L. 1927; re-en. Sec. 4016.126, R.C.M. 1935; R.C.M. 1947, 5-1042.

Cross-References

U.C.C. — bank deposits and collections — time of receipt of items, 30-4-107.

Effect of closing, 32-1-565.

32-1-483. Closing on Saturdays authorized — Saturday treated as holiday. Any bank as defined in 32-1-102 and any national bank or national banking association incorporated or organized under the laws of the United States of America and any federal reserve bank may, at its election, remain closed and refrain from the transaction of any business on Saturdays. Any Saturday on which any such bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act authorized, required, or permitted to be performed on a Saturday at or by or with respect to any bank including any national bank or national banking association and any federal reserve bank may be performed on the next succeeding business day, and no liability or loss of any rights of any kind shall result from such closing on Saturday or from the nonopening of any bank for the transaction of business on any Saturday under the authority of 32-1-483 through 32-1-485.

History: En. Sec. 1, Ch. 124, L. 1955; amd. Sec. 23, Ch. 71, L. 1977; R.C.M. 1947, 5-1055.

Cross-References

Effect of closing, 32-1-565.

32-1-484. Banking hours and business days. A bank may provide for its banking hours or business days by giving reasonable notice to the public and providing a copy of the notice to the department.

History: En. Sec. 2, Ch. 124, L. 1955; R.C.M. 1947, 5-1056; amd. Sec. 35, Ch. 395, L. 1993.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Bylaws, 32-1-308.

Effect of closing, 32-1-565.

32-1-485. Interest payable at bank on Saturday — how paid. Where, by the terms of any note or obligation, interest is payable to a bank on any Saturday upon which a bank is closed pursuant to the authority of 32-1-483 through 32-1-485, interest payable to such bank on any such Saturday may be paid in the amount due on such Saturday on the next succeeding business day with the same effect as if paid to such bank on such Saturday.

History: En. Sec. 3, Ch. 124, L. 1955; R.C.M. 1947, 5-1057.

Cross-References

Interest on deposits of public funds — conformity with federal law, 17-6-104.

U.C.C. — bank deposits and collections — time of receipt of items, 30-4-107.

Loan presumed to be on interest, 31-1-103.

Interest defined, 31-1-104.

32-1-486 through 32-1-490 reserved.

32-1-491. Destruction of records. (1) Banks and foreign capital depositories are required to preserve or keep their records of customer accounts for at least 8 years after January 1 of the year following the time that the records are made. However, records showing unpaid balances in favor of depositors of a bank or foreign capital depository may not be destroyed. Liability may not accrue against a bank or depository destroying any records (except records of which destruction is forbidden by this section) after the expiration of the time provided in this section.

(2) The department shall adopt rules providing for retention schedules for bank records other than those records listed in subsection (1).

History: En. Sec. 1, Ch. 77, L. 1951; R.C.M. 1947, 5-1050; amd. Sec. 1, Ch. 314, L. 1983; amd. Sec. 84, Ch. 382, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Examination and supervision by Department, 32-1-211.

Department to make rules, 32-1-218.

32-1-492. Definitions — reproduction of bank records — admissibility in evidence — cost recovery. (1) (a) For the purposes of this section, "bank records" includes any document, paper, letter, book, map, photograph, sound or video recording, magnetic tape, electronic-storage medium, or other information- recording medium used in a bank's normal course of business.

(b) (i) For the purposes of this section, "electronic storage" means the recording, storage, retention, maintenance, and reproduction of documents using microfilm, microfiche, data processing, computers, or other electronic process that correctly and legibly stores and reproduces documents.

(ii) A photographic, photostatic, miniature photographic copy, or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, must be considered an original record for all purposes and must be treated as an original record in all courts and administrative agencies for the purposes of admissibility in evidence.

(iii) A facsimile, exemplification, or certified copy of any reproduction referred to in subsection (1)(b)(ii) must, for all purposes, be considered a facsimile, exemplification, or certified copy of the original record.

(2) Except as provided in subsection (6), banks are authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, to be preserved, stored, used, and employed in carrying on business.

(3) In an action or proceeding in which bank records may be called in question or be demanded of a bank or any officer or employee of a bank, a showing that the records have been destroyed in the regular course of business is a sufficient excuse for the failure to produce the records.

(4) Upon the showing required in subsection (3), secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions, photographic enlargements, and prints of microfilm reproductions, when made in the regular course of business, is admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(5) Any photostatic, photographic, or microfilm reproductions, including enlargements of the microfilm reproductions, made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda that were in existence on July 1, 1951, are admissible in evidence as proof of the form, text, and content of the originals that were destroyed in the regular course of business.

(6) The reproduction of records of a foreign capital depository is subject to the provisions of Title 32, chapter 8, part 5.

(7) A bank may, as a condition of providing bank records to a third party in response to a subpoena or to another legal procedure or request, charge and collect the actual costs incurred in locating, reproducing, and providing the bank records.

History: **En. Sec. 2, Ch. 77, L. 1951; R.C.M. 1947, 5-1051; amd. Sec. 1, Ch. 237, L. 1997; amd. Sec. 85, Ch. 382, L. 1997; amd. Sec. 6, Ch. 100, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 100 inserted (7) allowing a bank to charge the costs of locating, reproducing, and providing bank records for a third party in regard to a legal procedure. Amendment effective October 1, 1999.

Cross-References

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or board prima facie evidence, 26-1-606.

Contents of writings, recordings, and photographs, Art. X, M.R.Ev. (see Title 26, ch. 10).

Records of electronic funds transfers, 32-6-301.

32-1-493. Admissibility of copies in evidence — exception when original available. Any photostatic or photographic or microfilm reproductions (including enlargements of the latter) of any original records or files of any bank, whether in the form of an entry or entries in a book or any other form of record, shall be admissible in evidence in any court of competent jurisdiction in proof of an act, transaction, occurrence, or event when shown to be made in the regular course of business of the bank. But nothing contained in 32-1-491 through 32-1-495 shall be construed to authorize the use of secondary evidence in administrative or court proceedings when original records are in existence and available for use in accord with the rules of evidence.

History: **En. Sec. 3, Ch. 77, L. 1951; R.C.M. 1947, 5-1052.**

Cross-References

Admissibility of duplicates or copies of certain entries, Rule 1003, M.R.Ev. (see Title 26, ch. 10).

Records of electronic funds transfers, 32-6-301.

32-1-494. Destruction or reproduction "in regular course of business" defined. Destruction in the regular course of business shall include destruction at any time after making such reproductions. Reproductions made in the regular course of business shall include reproductions made at any time prior to the destruction of the original, in each case, if done in good faith and without intent to defraud.

History: **En. Sec. 4, Ch. 77, L. 1951; R.C.M. 1947, 5-1053.**

Cross-References

U.C.C. — good faith defined, 30-1-201.

32-1-495. Application. The provisions of 32-1-491 through 32-1-495 shall be applicable to all records in existence on February 23, 1951, and to all records originating after said date and shall apply to all banks organized under the laws of the state of Montana and also to all national banks located in the state of Montana, as far as applicable to such national banks.

History: **En. Sec. 5, Ch. 77, L. 1951; R.C.M. 1947, 5-1054.**

Cross-References

Change from state to national bank, 32-1-361.

National bank powers extended to state banks, 32-1-362.

Certificate of change to national bank, 32-1-365.

Reorganization of national bank as state bank, 32-1-374.

Part 5

Dissolution, Closing, and Liquidation

Part Cross-References

Receivers, Title 27, ch. 20.

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

32-1-501. Dissolution and disincorporation. Commercial banks, savings banks, trust companies, investment companies, and foreign capital depositories may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a bank, trust company, or foreign capital depository may, upon a vote of two-thirds of its stockholders at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. A bank, trust company, or foreign capital depository that wishes to voluntarily liquidate shall apply to the department for permission to liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the department governing voluntary dissolution. The board of directors of a bank, trust company, or foreign capital depository whose stockholders have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank, trust company, or foreign capital depository. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank, trust company, or foreign capital depository. Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The decision of the department in these matters is controlling.

History: En. Sec. 20, Ch. 89, L. 1927; amd. Sec. 2, Ch. 145, L. 1931; amd. Sec. 1, Ch. 10, L. 1935; re-en. Sec. 6014.24, R.C.M. 1935; amd. Sec. 10, Ch. 431, L. 1975; R.C.M. 1947, 5-301; amd. Sec. 86, Ch. 382, L. 1997.

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

32-1-502. Grounds for closing bank. (1) When it appears to the department that:

(a) a bank has willfully violated its charter or a law of this state;

(b) a bank has willfully violated a general rule of the department, made in accordance with law;

(c) the capital of a bank is impaired or for any reason is below the amount required by law and has not been made good after notice, as provided by law, or, without that notice, in the event a majority of the board of directors of the bank notifies the department in writing that the impairment cannot be made good;

(d) a bank cannot meet or has failed to meet its liabilities as they become due in the regular course of business;

(e) a bank's reserve has fallen below the amount required by law and it has failed to make good that reserve within 30 days after being requested to do so by the department or, without that notice, if a majority of the directors, in writing, notifies the department that the reserve cannot be made good within 30 days or if it is continually allowing its reserve to fall below the required amount;

(f) a bank is conducting business in an unsafe and unauthorized manner or is in an unsafe or unsound condition;

(g) a bank refused to submit its papers, books, and concerns to the inspection of the department; or

(h) an officer of a bank has refused to be examined under oath regarding the affairs, business, or concerns of any bank insofar as they relate to solvency or matters having to do with the supervision by the department; then the department may, in its discretion, close the bank and take possession of all the books, records, assets, and business of every description of the bank and hold them and retain possession of them until the bank is authorized by the department to resume business or its affairs are liquidated as provided in this chapter, and it shall do so in cases where a bank comes into its possession voluntarily or in the manner provided by law.

(2) The powers and authority conferred on the department by this section, except in cases of voluntary surrender, are discretionary and not mandatory. As long as the department acts in good faith, the department and its employees and agents may not be held liable civilly or criminally or upon their official bonds for action taken under this section or for any failure to act under it.

History: En. Sec. 121, Ch. 89, L. 1927; re-en. Sec. 6014.131, R.C.M. 1935; amd. Sec. 43, Ch. 431, L. 1975; R.C.M. 1947, 5-1101.

Cross-References

Extent of surety's liability, 28-11-411.

Examination and supervision by Department, 32-1-211.

Department to make rules, 32-1-218.

Reserve requirements, 32-1-455.

Fraud by director, officer, or employee, 32-1-464.

32-1-503. Bank insolvent when. A bank is insolvent within the meaning of this chapter when all of its capital, surplus, and undivided profits are absorbed in losses and the remaining assets are not sufficient to pay and discharge its contracts, debts, and engagements.

History: En. Sec. 88, Ch. 89, L. 1927; re-en. Sec. 6014.99, R.C.M. 1935; R.C.M. 1947, 5-1015.

Cross-References

Insolvency — what constitutes, 31-2-202.

32-1-504. Deposits in insolvent bank. (1) Except as otherwise provided by the Uniform Commercial Code, whenever any bank shall be insolvent in the manner described and set forth in this chapter, such bank shall not accept or receive on deposit any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency separate and apart from the general assets of the bank from and after the date of the accrual of such insolvency. When such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the department.

(2) In the event such insolvency be not made good, then any and all such trust deposits shall be returned to the depositors making them.

(3) Any officer, director, cashier, manager, member, partner, or managing partner thereof who shall knowingly accept or receive, be accessory to, or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or imprisonment in the state prison not exceeding 5 years or by both fine and imprisonment.

History: En. Sec. 70, Ch. 89, L. 1927; re-en. Sec. 6014.74, R.C.M. 1935; amd. Sec. 11-102, Ch. 264, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-803.

Cross-References

Money defined, 30-1-201.

U.C.C. — bank deposits and collections — insolvency and preference, 30-4-214.

Investments of financial institutions, 32-1-424.

Fraud by director, officer, or employee, 32-1-464.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

32-1-505. Penalty for receiving deposits when insolvent or for making false statements. (1) Any officer, agent, or clerk of any bank, knowing such bank to be insolvent, who receives money, bank bills, notes of the United States, or currency or other bills or drafts circulating as money or currency, except in the manner set forth in 32-1-504; subscribes or makes any false statements or entries in the books of such bank; knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such bank; or willfully subscribes or makes false reports is subject to imprisonment in the state prison for a term not exceeding 5 years, a fine not exceeding $50,000, or both.

(2) Any person or the members of any partnership or banking association who willfully or knowingly receive deposits, money, or commercial papers circulating as money, when such person, partnership, or banking association is insolvent, or who subscribe or make any false statement or entries in the books of any such bank or who knowingly subscribe or exhibit any false papers with the intention of deceiving any person authorized to examine the condition of any bank provided for in this chapter or who willfully subscribe or make false reports to the department shall be guilty of a felony and shall be punishable by imprisonment in the state prison for a term not exceeding 5 years, by a fine not exceeding $50,000, or by both such fine and imprisonment.

History: (1)En. Sec. 69, Ch. 89, L. 1927; re-en. Sec. 6014.73, R.C.M. 1935; amd. Sec. 16, Ch. 71, L. 1977; Sec. 5-802, R.C.M. 1947; (2)En. Sec. 87, Ch. 89, L. 1927; re-en. Sec. 6014.98, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; Sec. 5-1014, R.C.M. 1947; R.C.M. 1947, 5-802, 5-1014; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Punishment, 32-1-110.

False statements and entries considered felony, 32-1-236.

Fraud by director, officer, or employee, 32-1-464.

Felony defined, 45-2-101.

Unsworn falsification to authorities, 45-7-203.

32-1-506. Assessment on capital stock to make good impairment. (1) When the department determines that an impairment of capital exists in a bank, it may, in its discretion, notify the board of directors of the bank by written notice that the impairment exists, stating the amount thereof in dollars and percentage of the capital stock, and it may, in its discretion, order the board to make good the impairment within 90 days from date of the notice.

(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of record, payment of which assessment must be made within the time limit specified by the department as provided in notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, it or a part of it as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than 30 days after the day fixed for payment of assessment. Notice of the time and place of

the sale shall be given by certified or registered mail to the stockholders by the board through its cashier or secretary at least 10 days prior to the sale. A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold and makes them void in the hands of the stockholder or his assigns or pledgees. A new certificate shall be issued by the bank to the purchaser for the number of shares purchased and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee of the stock for the remaining shares, if any. The record of the original certificate sold shall be marked canceled on the books of the bank, and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5) If a bank fails to make good its capital impairment upon demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in case of insolvency.

(6) If the stock does not sell for enough to pay the assessment on it, the board of directors may sue in the name of the corporation to collect the deficiency from the stockholder of record whose stock has been sold for the assessment.

History: En. Sec. 68, Ch. 89, L. 1927; re-en. Sec. 6014.72, R.C.M. 1935; amd. Sec. 29, Ch. 431, L. 1975; R.C.M. 1947, 5-801; amd. Sec. 4, Ch. 36, L. 1979.

Cross-References

Reports to Department, 32-1-231.

Special reports to Department, 32-1-233.

Purchase or loan of own capital stock prohibited, 32-1-335.

32-1-507. Power of closed banks to borrow money from governmental agencies. (1) Except as provided in subsection (2), after applying to and obtaining the approval of the department and the district court of the county in which the bank or trust or investment company is located, the liquidating agents of closed banks may borrow money from an agency of the federal government on behalf of commercial banks, savings banks, trust companies, and investment companies closed and in liquidation. As security for the loan the liquidating agent may pledge or mortgage assets and properties for the purpose of paying depositors or creditors in part or in full.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsection (1) do not apply.

History: En. Sec. 1, Ch. 3, Ex. L. 1933; re-en. Sec. 6015.1, R.C.M. 1935; amd. Sec. 62, Ch. 431, L. 1975; amd. Sec. 26, Ch. 71, L. 1977; R.C.M. 1947, 5-1126; amd. Sec. 36, Ch. 395, L. 1993.

Cross-References

Closed banking institutions empowered to borrow from corporation, 32-1-606.

32-1-508. Corporate existence — ceases when. The charters and the corporate existence of banks shall cease automatically and become nonexistent upon the completion of liquidation of the affairs of said bank, whether accomplished voluntarily or through legal process. For the purposes of this section, a bank's affairs shall be considered liquidated and completed when all of its property of every kind has been sold or applied toward the payment of its obligations and the corporation is left without property in existence or in reasonable expectancy.

History: En. Sec. 106, Ch. 89, L. 1927; re-en. Sec. 6014.117, R.C.M. 1935; R.C.M. 1947, 5-1033.

32-1-509. Taxes on banks which have ceased to do business. Whenever any bank ceases to do business as a bank, no taxes shall be levied or collected in accordance with the laws governing the assessment of banks but its property shall be assessed in accordance with the laws governing the assessment of similar property of private corporations.

History: En. Sec. 95, Ch. 89, L. 1927; re-en. Sec. 6014.106, R.C.M. 1935; R.C.M. 1947, 5-1022.

Cross-References

Taxation — return and payment on corporate dissolution, 15-31-143.

Taxation — banks and savings and loan associations, Title 15, ch. 31, part 7.

Business corporations — state tax clearance certificate, 35-1-944.

32-1-510. Penalty for maliciously declaring bank insolvent. If, as a result of malice or for personal gain, an employee or agent of the department declares a bank insolvent, he is subject to a fine not exceeding $1,000 or imprisonment in the county jail not exceeding 1 year, or both, and shall forfeit his office.

History: En. Sec. 122, Ch. 89, L. 1927; re-en. Sec. 6014.132, R.C.M. 1935; amd. Sec. 44, Ch. 431, L. 1975; R.C.M. 1947, 5-1102.

Cross-References

Rules of conduct for state officers and state employees, 2-2-121.

Punishment, 32-1-110.

Examination and supervision by Department, 32-1-211.

Confidentiality — penalties, 32-1-234.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-1-511. Bank may be placed in department's possession. A bank may place its affairs and assets under the control and in the possession of the department by posting a notice on the front door of the bank indicating that it is in the possession of the department. The notice shall be signed by a majority of the directors in office of the bank. Immediately upon the posting of the notice by a bank, it shall notify the department of its action.

History: En. Sec. 123, Ch. 89, L. 1927; re-en. Sec. 6014.133, R.C.M. 1935; amd. Sec. 45, Ch. 431, L. 1975; R.C.M. 1947, 5-1103.

Cross-References

Examination and supervision by Department, 32-1-211.

32-1-512. Effect of posting notice. The posting of the notice by the directors of a bank or of a like notice by the department is sufficient to place all assets and property of the bank, of whatever nature and wherever located, in possession of the department and operates as a bar to an attachment or other legal proceedings against the bank or its assets. No valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of the bank after the posting of the notice or after taking possession of a bank by the department without its consent.

History: En. Sec. 124, Ch. 89, L. 1927; re-en. Sec. 6014.134, R.C.M. 1935; amd. Sec. 46, Ch. 431, L. 1975; R.C.M. 1947, 5-1104.

Cross-References

Receivers, Title 27, ch. 20.

Attachments prohibited, 32-1-111.

Liens — general provisions, Title 71, ch. 3, part 1.

32-1-513. Taking possession of bank — notice. On taking possession of the assets and business of the bank, the department shall, in addition to posting notice on the front door of the bank, also notify, personally, by mail or by wire, all corresponding banks and all persons or corporations known to be in possession of any of the estate of the bank.

History: En. Sec. 125, Ch. 89, L. 1927; re-en. Sec. 6014.135, R.C.M. 1935; amd. Sec. 47, Ch. 431, L. 1975; R.C.M. 1947, 5-1105; amd. Sec. 37, Ch. 395, L. 1993.

Cross-References

Notice — actual and constructive, 1-1-217.

Examination and supervision by Department, 32-1-211.

32-1-514. Resumption after closing. After the department has taken possession of a bank, it may permit that bank to resume business upon conditions which may be approved by the department.

History: En. Sec. 126, Ch. 89, L. 1927; re-en. Sec. 6014.136, R.C.M. 1935; amd. Sec. 48, Ch. 431, L. 1975; amd. Sec. 24, Ch. 71, L. 1977; R.C.M. 1947, 5-1106.

Cross-References

Examination and supervision by Department, 32-1-211.

Reserve requirements, 32-1-455.

32-1-515. Powers of department on closing bank — court proceedings. (1) Upon taking the assets and business of a bank into its possession, the department is authorized to collect all money due to the bank and to do other acts necessary to conserve the bank's assets and business. The department shall proceed to liquidate the affairs of the bank.

(2) The department may, except as limited by the terms of this chapter, do any acts necessary or desirable for the protection of the property and assets of the bank, the speedy and economical liquidation of the assets and affairs of the bank, the payment of creditors, or the reopening and resumption of business when that is practicable or desirable.

(3) The department may institute, in its own name or in the name of the bank, legal proceedings it considers expedient for the purposes of subsection (1).

(4) (a) By applying to the district court of the county in which the bank is located or to the judge of that court, the department may obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell and dispose of any assets. The sale may be made to stockholders, officers, directors, or others interested in the bank on consent of the court.

(b) In the court proceedings the bank must be made a party by notice issued on order of the court or judge, in place of summons, and served upon an officer of the bank if there is an officer in the county.

(5) If the federal deposit insurance corporation is appointed as the liquidating agent, subsection (4) does not apply.

History: En. Sec. 127, Ch. 89, L. 1927; re-en. Sec. 6014.137, R.C.M. 1935; amd. Sec. 49, Ch. 431, L. 1975; R.C.M. 1947, 5-1107; amd. Sec. 38, Ch. 395, L. 1993.

Cross-References

Notice — actual and constructive, 1-1-217.

Parties — joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Powers and duties of State Banking Board, 32-1-202.

Examination and supervision by Department, 32-1-211.

32-1-516. Recourse of aggrieved bank — injunction. (1) A bank aggrieved by the action of the department in taking possession of its assets or closing its doors may, within 10 days after possession has been taken, apply to the district court of the county in which its principal place of business is located, or to the judge of that court in chambers, to enjoin further proceedings by the department.

(2) The court or the judge in chambers, after notifying the department to appear at a specified time and place to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining facts, may on the merits dismiss the application or enjoin the department from further proceeding and direct it to surrender the business and assets of the bank.

(3) The application for injunction may be heard at any time after 5 days' notice from the time of service on the department, in the discretion of the court, or at any time prior to then by the consent of the department.

(4) Application shall be made on the verified complaint of the bank, in the form used in civil actions, and a copy of the complaint shall be served on the department with the order to show cause.

(5) The department shall, at least 2 days before the time set for hearing, file with the court and serve upon counsel for plaintiff an answer to the complaint, also in the form used in civil actions. Any questions raised by motion in other actions may be raised in the answer.

(6) On the issues raised by the complaint and answer, the court or the judge at chambers, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment, as in the trial of other civil actions.

(7) If the department makes no appearance in the time allowed, the court shall enter its default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances and enter judgment accordingly. The judgment entered either after hearing on the merits or by default is a final judgment.

(8) During the pendency of litigation the department shall take that action in relation to the assets of the bank which is necessary to conserve them.

History: En. Sec. 128, Ch. 89, L. 1927; re-en. Sec. 6014.138, R.C.M. 1935; amd. Sec. 50, Ch. 431, L. 1975; R.C.M. 1947, 5-1108.

Cross-References

Pleadings, Rule 7(a), M.R.Civ.P. (see Title 25, ch. 20).

Form of pleadings, Rule 10, M.R.Civ.P. (see Title 25, ch. 20).

Judgment, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

32-1-517. Department may retain bank employees — liquidating agent's salary and expenses. (1) The department may retain those officers or employees of the bank which it considers necessary. It shall require from the agent appointed by it and from those assistants who have charge of any of the assets of the bank that security for the faithful discharge of their duties as it considers proper.

(2) The salary of a liquidating agent and necessary clerical assistance and other expenses incurred by a liquidating agent shall be borne equally and ratably by the bank or banks in process of liquidation under the agent's charge in proportion to the total amount of resources of each of the banks. The funds for those expenses shall be raised by assessing each bank in ratio herein set forth and paying those expenses direct to the persons entitled to them, without depositing any of the funds in the state treasury.

History: En. Sec. 129, Ch. 89, L. 1927; re-en. Sec. 6014.139, R.C.M. 1935; amd. Sec. 51, Ch. 431, L. 1975; R.C.M. 1947, 5-1109.

Cross-References

Agency, Title 28, ch. 10.

Selection of officers and employees — minutes and meetings, 32-1-325.

Bonding of employees, 32-1-461.

32-1-518. Compensation of agents and attorneys. (1) Except as provided in subsection (2), after notice to the bank and subject to approval by a district court judge of the county in which the bank is located, the compensation of the agents, attorneys, expert accountants, and other assistants appointed by the department and all expenses of liquidation and distribution of a bank whose assets and business have been taken possession of by the department must be fixed by the department. The department shall, upon written request of the judge, supply semiannual statements showing the condition of the bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert accountants must be fixed and approved before services are rendered. The compensation must be paid out of the funds of the bank in the hands of the department and are a proper charge and lien on the assets of the bank.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsection (1) do not apply.

History: En. Sec. 130, Ch. 89, L. 1927; re-en. Sec. 6014.140, R.C.M. 1935; amd. Sec. 52, Ch. 431, L. 1975; R.C.M. 1947, 5-1110; amd. Sec. 39, Ch. 395, L. 1993.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

Agency, Title 28, ch. 10.

Liens generally, Title 71, ch. 3, part 1.

32-1-519 through 32-1-530 reserved.

32-1-531. Notice to creditors of insolvent bank. (1) Except as provided in subsection (2), the department shall give notice by advertisement in a newspaper of general circulation in the town or city in which the bank is situated, if there is one, and, if not, then in some other newspaper published in this state, which the department shall designate, once a week for 2 successive weeks. The notice must call on all persons who have claims against the bank to present them to the department or its authorized agent at a place specified in the notice and to make sworn proof, in a form to be fixed by the department, within the time specified in the notice, not less than 90 days from the date of the first publication. A copy of the notice must be mailed to all persons whose names appear as creditors upon the books of the bank.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsection (1) do not apply and notice to creditors must be given pursuant to federal law.

History: En. Sec. 131, Ch. 89, L. 1927; re-en. Sec. 6014.141, R.C.M. 1935; amd. Sec. 53, Ch. 431, L. 1975; R.C.M. 1947, 5-1111; amd. Sec. 40, Ch. 395, L. 1993.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Assignments for benefit of creditors — notice to creditors to present claims, 31-2-221.

32-1-532. Claims — allowance and rejection. (1) Except as provided in subsection (6), the department shall reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

(2) If a claim is rejected or an order of priority allowed lower than that claimed, notice must be given the claimant personally or by certified mail and an affidavit of the service of the notice, which is prima facie evidence of service, must be filed in the office of the department.

(3) The action of the department is final unless an action is brought by the claimant against the bank in the district court of the county in which the bank is located within 90 days after service. An appeal from the department's allowance may also be taken by any party in interest by serving notice on the department, stating the grounds of objection and filing it in that court within 30 days after allowance.

(4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department's action.

(6) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsections (1) through (5) do not apply and notice to creditors must be given pursuant to federal law.

History: En. Sec. 132, Ch. 89, L. 1927; re-en. Sec. 6014.142, R.C.M. 1935; amd. Sec. 54, Ch. 431, L. 1975; R.C.M. 1947, 5-1112; amd. Sec. 41, Ch. 395, L. 1993.

Cross-References

Proof of service, Rule 4D(8), M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

U.C.C. — secured transactions — persons who take priority over unperfected security interests — "lien creditor", 30-9-301.

32-1-533. Payment of claims. (1) Claims presented to the department prior to the expiration of the time fixed in the notice to creditors and allowed by it shall be paid in the order of priority fixed in this chapter.

(2) Those filed after that expiration and within 1 year of that expiration are entitled, after they have been allowed by the department, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the department and available for the payment of claims of their order of priority at the time the claims are filed. As against other claims of the same order of priority on which dividends have been paid, they are entitled to payment in a proportionate amount before further payments are made on those other claims.

(3) All claims filed after the expiration of 1 year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind, except claims of shareholders based on stock or assessments paid on stock, have been fully paid and a surplus remains in the hands of the department and then only from that surplus.

History: En. Sec. 133, Ch. 89, L. 1927; re-en. Sec. 6014.143, R.C.M. 1935; amd. Sec. 55, Ch. 431, L. 1975; R.C.M. 1947, 5-1113.

Cross-References

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

32-1-534. Claims — order of payment — priorities. (1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the department is as follows:

(a) the expense of liquidation, including compensation of agents, employees, and attorneys;

(b) all funds of any other bank in process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the bank in trust;

(d) debts due depositors or holders of cashier's checks, certified checks, and drafts on correspondent banks, including protest fees paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing for deposit), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured or whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the bank, is considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) without regard to the priority computed from the date of closing of the bank at the rate of 7% a year;

(f) unliquidated claims for damages and similar claims, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments.

(2) The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c) through (1)(f) or in preference to the payment of any claims of creditors within these subsections, pay off and discharge any lien, claim, or charge against the assets or property of the bank in its hands and pay those sums it considers necessary for the preservation, maintenance, conservation, and protection of those assets and property and property on which the bank has liens by mortgage or otherwise. The department may create a fund or retain, in preference to the claim of any creditors in subsections (1)(c) through (1)(f), money for those purposes.

(3) Collateral that has been put up or pledged as security for the payment of bills payable by a bank or loans or discounts that have been outstanding as rediscounts of a bank prior to the closing of it is not available to the other creditors of the bank in whole or in part until the bills payable or rediscounts have been retired, after which offsets as provided in this section must be allowed.

(4) Deposits of a person, firm, or corporation in a bank that is in the possession of the department may be offset against any indebtedness (subject to the conditions of subsection (3)), except assessments on stock, due to the bank from that person, firm, or corporation. All dividends when declared in favor of a creditor of the bank may be applied, in the discretion of the department, in satisfaction of the indebtedness, if any, due the bank from the creditor.

History: En. Sec. 134, Ch. 89, L. 1927; amd. Sec. 4, Ch. 145, L. 1931; re-en. Sec. 6014.144, R.C.M. 1935; amd. Sec. 11-104, Ch. 264, L. 1963; amd. Sec. 56, Ch. 431, L. 1975; R.C.M. 1947, 5-1114; amd. Sec. 5, Ch. 36, L. 1979; amd. Sec. 42, Ch. 395, L. 1993.

Cross-References

Security for deposits of public funds, 17-6-103.

Powers of receiver, 27-20-302.

U.C.C. — bank deposits and collections — insolvency and preference, 30-4-214.

U.C.C. — secured transactions — persons who take priority over unperfected security interests — "lien creditor", 30-9-301.

Certified checks, 32-1-441.

Giving security for deposit prohibited — exceptions, 32-1-447.

32-1-535. Claims — partial payments — assignments. (1) The department need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends. It may, in its discretion and if under the circumstances of the particular case it considers it expedient and safe, at any time after taking possession of the bank and prior to the expiration of the period fixed for filing of claims, if it has on hand in cash sufficient funds over and above the expenses of liquidation, make pro rata distribution to any class of creditors next entitled to distribution, in the order of priority fixed in this chapter, making that payment to the creditors as they appear on the books and records of the bank and determining the priority and basing its apportionment on the amount shown to be due by the books and records.

(2) At any time after the expiration of the date fixed for the presentation of claims against the bank and from time to time thereafter when, in its discretion, there are sufficient funds available, the department shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of the bank pro rata in the order of their priority. If, after the time

fixed for presentation of claims against the bank has expired, it appears that a person, prior to the expiration of the period or at any other time, has been paid more than the pro rata amount due him as compared with the amounts then paid other creditors, nothing more may be paid that creditor until the payment made other creditors places them on equal footing.

(3) In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon the disputed claims or deposits shall be held by the department until the validity of those claims or deposits has been finally determined.

(4) Claims against a bank in process of liquidation may be assigned in whole or in part subject to the approval of the department. Assignments of claims are binding upon the department only after they have been filed and allowed by the department and are subject to the payment of the assignor's liabilities to the bank. An assignment shall be made by filing written notice, signed by the original claimant, with the department or person in charge of the bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against a bank closed or taken possession of by the department, whether issued before or after closing, may not be recognized as a claim against the bank or as an assignment of any amount, whether protested or not protested.

History: En. Sec. 135, Ch. 89, L. 1927; re-en. Sec. 6014.145, R.C.M. 1935; amd. Sec. 5, Ch. 145, L. 1931; amd. Sec. 57, Ch. 431, L. 1975; amd. Sec. 25, Ch. 71, L. 1977; R.C.M. 1947, 5-1115.

Cross-References

Powers of receivers, 27-20-302.

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

Escheat, 70-1-203.

32-1-536. Deposit of funds in department's hands. All funds in the hands of the department belonging to a bank in process of liquidation shall be deposited in the department's name in those banks within the state which may be selected and designated by it and subject to its checks. Those funds are to be preferred and protected as provided in this chapter.

History: En. Sec. 136, Ch. 89, L. 1927; re-en. Sec. 6014.146, R.C.M. 1935; amd. Sec. 58, Ch. 431, L. 1975; R.C.M. 1947, 5-1116.

Cross-References

Investments of financial institutions, 32-1-424.

32-1-537. Disposition of unclaimed funds. (1) The department shall certify to the state treasurer a complete list of funds remaining with it that are uncalled for and that have been left with it in its official capacity in trust for depositors in and creditors of a liquidated bank after they have been held by it for 6 months from the date of the final liquidation of the institution. Along with this certificate, the department shall transmit to the state treasurer the funds, with accumulated interest on them, that it has held in trust for 6 months. A copy of the certificate must also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to the person's credit as certified to the state treasurer may apply to the department for the amount due. The depositor or creditor shall make an affidavit and offer proof of identity and of the amount due. When satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to the state treasurer who shall audit the claim and, if found correct,

certify the claim to the department. If the department approves the claim, it shall pay the claim to the depositor or creditor.

History: **En. Sec. 137, Ch. 89, L. 1927; re-en. Sec. 4016.147, R.C.M. 1935; amd. Sec. 1, Ch. 143, L. 1961; amd. Sec. 59, Ch. 431, L. 1975; amd. Sec. 2, Ch. 343, L. 1977; R.C.M. 1947, 5-1117; amd. Sec. 43, Ch. 395, L. 1993; amd. Sec. 27, Ch. 325, L. 1995; amd. Sec. 33, Ch. 422, L. 1997.**

Cross-References

State finance — fund structure, 17-2-102.

Deposit of funds in hands of State Treasurer, 17-6-101.

32-1-538. Disposition of assets remaining after payment of claims. (1) Except as provided in subsection (4), when the department has paid to each depositor and creditor of the bank whose claims have been approved and allowed as provided in this chapter the amount due on them or made satisfactory adjustment of them and has made provisions for unclaimed and unpaid deposits and disputed claims and deposits and has paid all the expenses of liquidation, it shall file a report of its administration of the trust with the clerk of the district court of the county in which the bank is located. If there are remaining assets on hand, the department may apply to the judge of that court for an order authorizing it to surrender the remaining assets, together with all the stationery, correspondence, books, and records kept by the bank while it was a going concern, to the directors of the bank in office at the time of closing it, as trustees for stockholders, or to some other person, if any, designated as trustee by a majority of the stockholders. The report and petition must be set for hearing upon notice that the court may direct. Upon hearing and approval of the report and account and the surrender of the assets as directed, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The court may, if requested, require the trustees to give bond in an amount the court may fix, conditioned for the faithful performance of their duties. The trustee or trustees shall complete the liquidation of any remaining assets and may sell and dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the stockholders as their rights may appear or dispose of the proceeds in some other manner as the stockholders by majority action direct. The court may upon request of a majority of the stockholders order the department to close up the trust as provided in subsection (2).

(2) If the assets of the bank are insufficient for making payments in full to the depositors and creditors of the bank, then, when the department has liquidated all available assets and disbursed them as provided by law, the department shall file a final report of its liquidation of the bank with the clerk of court of the county in which the bank is located. Upon notice that the court may order, the report must be set for hearing before the court and, if found correct and all funds accounted for, the court shall approve it. The department may at the same time and in the report make application to the district court of the county in which the bank is located for an order directing the closing of the trust, and upon entry of the order closing the trust, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The charter of the bank must be forfeited and all the stationery, correspondence, books, and records kept by the bank while it was a going concern and considered by the department to be of no value may be destroyed. However, correspondence or records may not be destroyed until 10 years after the date the bank ceased to be a going concern.

(3) On application for orders as provided in this section, the bank must be made a party by notice issued on order of the court or judge and served in a manner

the court directs and applications authorized by this section may be heard at any time upon not less than 5 days' posted or served notice of the hearing.

(4) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsections (1) through (3) do not apply.

History: En. Sec. 138, Ch. 89, L. 1927; amd. Sec. 1, Ch. 78, L. 1935; re-en. Sec. 6014.148, R.C.M. 1935; amd. Sec. 60, Ch. 431, L. 1975; R.C.M. 1947, 5-1118; amd. Sec. 44, Ch. 395, L. 1993.

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Examination and supervision by Department, 32-1-211.

Destruction of bank records, 32-1-491.

Modification and termination of trusts, Title 72, ch. 33, part 4.

32-1-539 through 32-1-550 reserved.

32-1-551. Liquidating officer's powers and duties. (1) Except as provided in subsection (3), after taking possession of a bank for the purpose of liquidation, the liquidating officer may as soon as the officer ascertains that the assets of the bank will be insufficient to pay its debts and liabilities, proceed to collect and enforce the stockholders' liability. For that purpose, the officer may institute and maintain in the officer's own name as liquidating officer appropriate suits or actions in any state or federal court of competent jurisdiction. The liquidating officer may receive and receipt for money received on account of stockholders' liability, and any money paid to the liquidating officer by a stockholder in whole or partial satisfaction of the stockholder's liability is not considered paid voluntarily but gives the stockholder the same protection to the extent of the amount paid as if the payments were made after suit by a creditor or the liquidating officer. The liquidating officer may, with the consent of the court having jurisdiction of the liquidation, compromise, settle, and compound claims for stockholders' liability, and the settlements and compromises when approved by the court are legal and binding upon all parties concerned, including creditors.

(2) (a) Except as provided in subsection (2)(b), all sums collected by a liquidating officer on account of stockholders' liability, either received from voluntary payments or collected by suits, settlements, or compromises, must be distributed to the creditors of the bank according to their several rights in the same proportion as the amount of a given claim of a creditor bears to the amount of the claims of all creditors and without regard to the rank or class or character of claims and without diminution.

(b) The liquidating officer may deduct from amounts collected the court costs or attorney fees (the attorney fees to be allowed for not more than 10% of the amount collected, provided that the 10% allowed for attorney fees may not apply to collections that are made outside of the state of Montana) and other expenses incurred by the officer in the prosecution of any action for collection.

(3) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsections (1) and (2) do not apply.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; R.C.M. 1947, 5-402; amd. Sec. 45, Ch. 395, L. 1993.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

Officers' fees — prepayment, Title 25, ch. 10, part 4.

Powers of receiver, 27-20-302.

32-1-552. Further duties of liquidating officer. (1) For the purpose of this section the term "liquidating officer" includes every person legally empowered to liquidate the business and affairs of a state bank, whether the liquidation is by the department or its deputies and agents. The term also includes all receivers of state banks qualified to liquidate a state bank under any law of this state.

(2) The liquidating officer of a bank may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements, and liabilities and may determine the time when and the court where necessary legal proceedings are conducted, subject to the general provisions of law governing venue and place of trial.

(3) The provisions of 32-1-551 through 32-1-553 do not impose liability on a stockholder of a bank that is a member of the federal deposit insurance corporation.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; amd. Sec. 11, Ch. 431, L. 1975; amd. Sec. 3, Ch. 71, L. 1977; R.C.M. 1947, 5-403(1) thru (3); amd. Sec. 46, Ch. 395, L. 1993.

Cross-References

Venue, Title 25, ch. 2.

Powers of receiver, 27-20-302.

Federal Deposit Insurance Corporation, Title 32, ch. 1, part 6.

32-1-553. Department to file inventory — report required — exception. (1) Except as provided in subsection (2), the department shall, within 90 days after taking charge of an insolvent bank, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured. The department shall every 6 months, or more often if required by the court, file with the court a report showing the status of the liquidation of the bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report must contain other information the court requires, so that the court and the public may be apprised of the condition of the bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the bank and the manner in which claims are being paid. The report and account must be set for hearing upon the notice the court may require and, if found to be correct, be approved by the court.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, subsection (1) does not apply.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; amd. Sec. 11, Ch. 431, L. 1975; amd. Sec. 3, Ch. 71, L. 1977; R.C.M. 1947, 5-403(4); amd. Sec. 47, Ch. 395, L. 1993.

Cross-References

Assignments for benefit of creditors — inventory required, 31-2-213.

Purchase of obligation of bank by officer, 32-1-466.

32-1-554 through 32-1-560 reserved.

32-1-561. Definitions. As used in 32-1-562 through 32-1-565, unless the context requires otherwise, the following definitions apply:

(1) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and, to the extent that the provisions of 32-1-562 through 32-1-565 are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

(2) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at any of the offices of a

bank or which poses an imminent or existing threat to the safety or security of persons or property or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any of the following:

(a) fire;
(b) flood;
(c) earthquake;
(d) hurricanes;
(e) wind, rain, or snowstorms;
(f) labor disputes and strikes;
(g) power failures;
(h) transportation failures;
(i) interruption of communication facilities;
(j) shortages of fuel, housing, food, transportation, or labor;
(k) robbery or attempted robbery;
(l) actual or threatened enemy attack;
(m) epidemics or other catastrophes;
(n) riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

(3) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

(4) "Officer" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank in carrying out the provisions of 32-1-562 through 32-1-565 or, in the absence of a designation or of the officer or officers designated, the president or any other officer currently in charge of the bank or of the office or offices involved.

History: En. Sec. 1, Ch. 32, L. 1971; amd. Sec. 38, Ch. 431, L. 1975; R.C.M. 1947, 5-1058.

Cross-References

Disaster and emergency services, Title 10, ch. 3.

Bank holidays, 32-1-481.

Robbery, 45-5-401.

Theft, 45-6-301.

Riot, 45-8-103.

32-1-562. Power of department. When the department is of the opinion that an emergency exists or is impending in this state or in any part of this state, it may, by proclamation, authorize banks located in the affected area to close any of their offices. In addition, if the department is of the opinion that an emergency exists or is impending which affects or may affect a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, it may authorize the particular bank or banks or office or offices so affected to close. The office or offices so closed shall remain closed until the department proclaims that the emergency has ended or until such earlier time as the officers of the bank determine that one or more offices theretofore closed because of the emergency should reopen and, in either event, for such further time thereafter as may reasonably be required to reopen.

History: En. Sec. 2, Ch. 32, L. 1971; amd. Sec. 39, Ch. 431, L. 1975; R.C.M. 1947, 5-1059.

32-1-563. Powers of officers. (1) When the officers of a bank are of the opinion that an emergency exists or is impending which affects or may affect any of a bank's offices, they may, in the reasonable and proper exercise of their discretion, determine not to open any of those offices on any banking day or, if having opened, to close any of those offices during the continuation of the emergency, even if the department has not issued and does not issue a proclamation of emergency. An office so closed shall remain closed until the officers determine that the emergency has ended and for a further time thereafter as may reasonably be required to reopen. However, in no case shall an office remain closed for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the department.

(2) The officers of a bank may close any of the bank's offices on any day:

(a) designated by proclamation of the president of the United States or the governor of this state as a day of mourning, rejoicing, or other special observance; or

(b) that the federal reserve bank of Minneapolis is not open for business.

History: En. Sec. 3, Ch. 32, L. 1971; amd. Sec. 40, Ch. 431, L. 1975; R.C.M. 1947, 5-1060; amd. Sec. 2, Ch. 264, L. 1979.

Cross-References

Powers and duties of Governor, 2-15-201.

Selection of officers and employees — meetings and minutes, 32-1-325.

Bank holidays, 32-1-481.

32-1-564. Notice of bank closing. A bank closing an office under authority granted under 32-1-563(1) shall give to the department as prompt notice of its action as conditions will permit and by any means available, and, in the case of a national bank, to the comptroller of the currency.

History: En. Sec. 4, Ch. 32, L. 1971; amd. Sec. 41, Ch. 431, L. 1975; R.C.M. 1947, 5-1061.

Cross-References

National bank powers extended to state banks, 32-1-362.

Bank holidays, 32-1-481.

32-1-565. Effect of closing. (1) A day on which a bank or any of its offices is closed during any part of its normal banking hours under 32-1-562 and 32-1-563 with respect to that bank or, if not all of its offices are closed, then with respect to the office or offices which are closed shall be a legal holiday for all purposes with respect to any banking business. No liability or loss of rights of any kind on the part of a bank, or director, officer, or employee thereof, may accrue or result by virtue of a closing authorized by 32-1-562 and 32-1-563.

(2) The provisions of 32-1-561 through 32-1-565 are in addition to any other law of this state or of the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control or otherwise.

History: En. Sec. 5, Ch. 32, L. 1971; amd. Sec. 42, Ch. 431, L. 1975; R.C.M. 1947, 5-1062.

Cross-References

Bank holidays, 32-1-481.

Transactions on holidays, 32-1-482.

Part 6

Federal Deposit Insurance Corporation

Part Cross-References

Insurance on deposits of public funds, 17-6-102.

32-1-601. Definition of banking institution. The term "banking institution" as used in this part shall be construed to mean any bank, trust company, bank and trust company, stock savings bank, or mutual savings bank, which is now or may hereafter be organized under the laws of this state.

History: En. Sec. 1, Ch. 197, L. 1937; R.C.M. 1947, 5-1201.

Cross-References

Institutions to which chapter is applicable, 32-1-102.

32-1-602. Banking institutions empowered to receive federal deposit insurance corporation aid. A banking institution may, on the authority of its board of directors or a majority thereof, enter into those contracts, incur those obligations, and generally perform any acts necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges available to banking institutions or to their depositors, creditors, stockholders, conservators, or liquidators by virtue of those provisions of the Federal Deposit Insurance Act which establish the federal deposit insurance corporation and provide for the insurance of deposits or of any other act or resolution of congress to aid, regulate, or safeguard banking institutions and their depositors. A banking institution may also subscribe for and acquire stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and may comply with the lawful rules and requirements from time to time adopted by that corporation.

History: En. Sec. 2, Ch. 197, L. 1937; amd. Sec. 64, Ch. 431, L. 1975; R.C.M. 1947, 5-1202.

Cross-References

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

Investments of financial institutions, 32-1-424.

32-1-603. Appointment of the corporation as agent in liquidation. If a banking institution, the deposits in which are in any extent insured by the federal deposit insurance corporation created by the Federal Deposit Insurance Act, 12 U.S.C. 1811 through 1831, is closed on account of inability to meet the demands of its creditors, the department may appoint the corporation agent, without bond, to assist it or act for it in the liquidation of that banking institution.

History: En. Sec. 3, Ch. 197, L. 1937; amd. Sec. 65, Ch. 431, L. 1975; R.C.M. 1947, 5-1203.

Cross-References

Powers of Department on closing bank — court proceedings, 32-1-515.

Further duties of liquidating officer, 32-1-552.

32-1-604. Subrogation of corporation. Whenever any banking institution shall have been closed as aforesaid and said federal deposit insurance corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, said corporation, whether or not it shall have been appointed agent of the department in the liquidation of such closed banking institution, as herein provided, shall be and become subrogated by operation of law to all rights against such closed banking institution of each owner of a claim for deposit to the extent now or hereafter necessary to enable the federal deposit insurance corporation, under federal law, to make insurance payments available to depositors of closed insured banks.

History: En. Sec. 4, Ch. 197, L. 1937; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1204.

Cross-References

Payment of claims, 32-1-533.

32-1-605. Examinations by the corporation — accepted when. (1) The department may accept, in its discretion, in place of any examination authorized by the laws of this state to be conducted by the department of a banking institution, the examination made of it within a reasonable period by the federal deposit insurance corporation, if a signed copy of the examination is furnished to the department. The department may also, in its discretion, accept a report relative to the condition of a banking institution obtained by the corporation within a reasonable period, in place of a report authorized by the laws of this state to be required of the institution by the department, if a copy of the report is furnished to the department. The department may, in its discretion, disclose to the corporation, or an official or examiner thereof, any information possessed by the department with reference to the conditions or affairs of an insured institution.

(2) The department may furnish to the corporation, or to an official or examiner thereof, a copy or copies of any examinations made of those banking institutions and of any reports made by them.

(3) Nothing in this section limits the duty of any banking institution in this state, deposits in which are to any extent insured under the Federal Deposit Insurance Act or any substitution for it, to comply with the provisions of that act, its substitutions, or the requirements of that corporation relative to examinations and reports or limits the powers of the department with reference to examinations and reports under existing law.

History: En. Sec. 5, Ch. 197, L. 1937; amd. Sec. 66, Ch. 431, L. 1975; R.C.M. 1947, 5-1205.

Cross-References

Examination and supervision by Department, 32-1-211.

Special examination defined, 32-1-214.

Special examinations and fees, 32-1-215.

Examination at request of directors, 32-1-216.

32-1-606. Closed banking institutions empowered to borrow from corporation. If a banking institution is closed on account of inability to meet the demands of its depositors, by action of the department, by action of its directors, or in the event of its insolvency or suspension, the department or its agent may borrow from the corporation and furnish any of the assets of the institution to the corporation as security for a loan from the corporation. The department may sell to the corporation any part or all of the assets of the institution. The provisions of this section do not limit the power of a banking institution or the department to pledge or sell assets in accordance with any existing law.

History: En. Sec. 6, Ch. 197, L. 1937; amd. Sec. 67, Ch. 431, L. 1975; R.C.M. 1947, 5-1206; amd. Sec. 48, Ch. 395, L. 1993.

Cross-References

Purchase of obligation of bank by officer, 32-1-466.

Power of closed banks to borrow money from governmental agencies, 32-1-507.

Part 7

Uniform Common Trust Act

Part Cross-References

Trust Code, Title 72, ch. 33 through 36.

32-1-701. Short title. This part may be cited as the "Uniform Common Trust Act".

History: En. Sec. 4, Ch. 64, L. 1955; R.C.M. 1947, 5-1404.

32-1-702. Application. This part shall apply to fiduciary relationships in existence as of July 1, 1955, or thereafter established.

History: En. Sec. 7, Ch. 64, L. 1955; R.C.M. 1947, 5-1406.

Cross-References

Agency, Title 28, ch. 10.

Estates, Trusts, and Fiduciary Relationships, Title 72.

32-1-703. Common trust fund allowed. (1) Any bank or trust company qualified to act as fiduciary in this state may establish and administer common trust funds composed of property permitted by law for the investment of trust funds for the purpose of furnishing investments to:

(a) itself as fiduciary;

(b) itself and others as cofiduciaries;

(c) any affiliated bank or trust company, including any foreign affiliated bank or trust company, as fiduciary;

(d) any affiliated bank or trust company, including any foreign affiliated bank or trust company, and others as cofiduciaries; or

(e) any combination of the entities listed in subsections (1)(a) through (1)(d).

(2) Any bank or trust company may, as that fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in the common trust funds administered by itself or by any affiliated bank or trust company if the investment is not prohibited by the instrument, judgment, decree, order, or statute creating and governing such fiduciary relationship and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to the investment.

History: En. Sec. 1, Ch. 64, L. 1955; amd. Sec. 68, Ch. 431, L. 1975; R.C.M. 1947, 5-1401; amd. Sec. 1, Ch. 213, L. 1981.

Cross-References

Banks allowed to join federal reserve bank, 32-1-373.

Investments of financial institutions, 32-1-424.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

Trust Code, Title 72, ch. 33 through 36.

32-1-704. Accounting for trust funds. Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds, but it may, by application to the district court, secure approval of such an accounting on such conditions as the court may establish.

History: En. Sec. 2, Ch. 64, L. 1955; R.C.M. 1947, 5-1402.

32-1-705. Construction. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 3, Ch. 64, L. 1955; R.C.M. 1947, 5-1403.

32-1-706. Common trust funds established. Each common trust fund established hereunder is a separate and distinct entity from the fiduciary relationships participating in the fund. No fiduciary, in administering a participating fiduciary relationship, may be required to make any apportionment or allocation between the principal and income of such relationship different from that made for the common trust fund. No such participating fiduciary relationship or person having an interest in the relationship may have or be considered to have any ownership in any particular property of the common trust fund; but each participating fiduciary relationship shall have a proportionate undivided interest in the fund and its income; and the ownership of all property of the common trust fund shall be in the trustee of the fund.

History: En. 5-1407 by Sec. 1, Ch. 271, L. 1977; R.C.M. 1947, 5-1407; amd. Sec. 2, Ch. 213, L. 1981.

Cross-References

Consolidation or merger of banks, 32-1-371.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-707. Affiliated defined. For purposes of this part, two or more banks or trust companies are affiliated if they are members of the same affiliated group, within the meaning of section 1504 of the United States Internal Revenue Code.

History: En. Sec. 3, Ch. 213, L. 1981.

32-1-708. Limited application of insurance law — exemption. (1) Nothing in this part exempts a common trust fund or any fiduciary thereof from the requirements of Title 33 if such common trust fund or fiduciary is used for insurance purposes.

(2) The establishment and maintenance of common trust funds under this part are exempt from the provisions of Title 30, chapter 10.

History: En. Sec. 4, Ch. 213, L. 1981.

Part 8

Subsidiary Trust Companies

Part Cross-References

Trust Code, Title 72, ch. 33 through 36.

32-1-801. Short title. This part may be cited as "The Subsidiary Trust Company Act of 1975".

History: En. 5-1501 by Sec. 1, Ch. 401, L. 1975; R.C.M. 1947, 5-1501.

32-1-802. Definitions. As used in this part, the following definitions apply:

(1) (a) "Affiliated bank", with respect to a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office in this state, more than 50% of the voting stock of which is owned by the same owning bank holding company that owns more than 50% of the voting stock of the subsidiary trust company.

(b) Affiliated bank, with respect to another bank which is not a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office located in this state, more than 50% of the stock of which is owned by the same owning bank holding company that owns more than 50% of the voting stock of such other bank.

(2) "Fiduciary capacity" means a capacity resulting from a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes the capacities of trustee (including trustee of a common trust fund), executor, administrator, personal representative, registrar, or transfer agent with respect to stocks, bonds, or other evidences of indebtedness of any corporation, association, municipality, state or public authority, guardian of estates, receiver, conservator, escrow agent, agent for the investment of money, attorney-in-fact, and any other similar capacity.

(3) "Main office", with respect to a subsidiary trust company or an affiliated bank, is the place designated in the articles of incorporation or articles of association of that subsidiary trust company or affiliated bank at which its principal functions are to be conducted.

(4) "Owning bank holding company", with respect to a subsidiary trust company or an affiliated bank, means a bank holding company as defined in the United States Bank Holding Company Act of 1956, as amended.

(5) "Subsidiary trust company" means any corporation which is incorporated under the banking laws of this state and any national banking association having its main office in this state, more than 50% of the voting stock of which is owned by an owning bank holding company and which has as its purposes any one or more

of the purposes described in 32-1-107, except that a subsidiary trust company may not be empowered to accept deposits or otherwise to conduct commercial banking business.

(6) (a) "Trust office", with respect to a subsidiary trust company, means an office, including the main office, of the subsidiary trust company maintained for the purpose of conducting its business.

(b) Trust office, with respect to a bank which is not a subsidiary trust company, means an office other than the main office of that bank maintained solely for the purpose of conducting trust business as described in 32-1-804.

History: En. 5-1502 by Sec. 2, Ch. 401, L. 1975; R.C.M. 1947, 5-1502.

Cross-References

Consolidation or merger of banks, 32-1-371.

Fiduciary defined, 72-1-103.

32-1-803. Organization of subsidiary trust companies. A subsidiary trust company must be incorporated under the laws of this state in accordance with and subject to the provisions of 32-1-301 through 32-1-303, 32-1-307, 32-1-308, 32-1-321, 32-1-322, and 32-1-325 or under the laws of the United States. To the extent not inconsistent with the provisions of this part, a subsidiary trust company incorporated under the laws of this state is subject to the laws of this state generally applicable to trust companies. A subsidiary trust company formed under the laws of the United States is subject, to the extent provided by the laws of the United States, to the laws of this state applicable to subsidiary trust companies incorporated under the laws of this state.

History: En. 5-1503 by Sec. 3, Ch. 401, L. 1975; R.C.M. 1947, 5-1503; amd. Sec. 78, Ch. 370, L. 1987; amd. Sec. 2, Ch. 24, L. 1989; amd. Sec. 49, Ch. 395, L. 1993.

Cross-References

Business corporations — formation — articles of incorporation — bylaws, Title 35, ch. 1, part 2.

32-1-804. Permissible business of subsidiary trust companies. The permissible business of a subsidiary trust company shall be to engage in such trust business as may be engaged in by a trust company under 32-1-107 and such business as is incidental thereto. A subsidiary trust company shall not accept deposits or otherwise conduct commercial banking business.

History: En. 5-1504 by Sec. 4, Ch. 401, L. 1975; R.C.M. 1947, 5-1504.

32-1-805. Trust offices of subsidiary trust companies. Notwithstanding the provisions of 32-1-372, a subsidiary trust company may have a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which on January 1, 1975, was authorized to act in fiduciary capacities but not elsewhere.

History: En. 5-1505 by Sec. 5, Ch. 401, L. 1975; R.C.M. 1947, 5-1505.

32-1-806. Trust offices of affiliated banks. Notwithstanding the provisions of 32-1-372, a bank having trust powers may be authorized by the department or by the comptroller of the currency, in the case of a national banking association, to maintain a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which on January 1, 1975, was authorized to act in fiduciary capacities.

History: En. 5-1506 by Sec. 6, Ch. 401, L. 1975; R.C.M. 1947, 5-1506.

Cross-References

Trust Code, Title 72, ch. 33 through 36.

32-1-807. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies. (1) Upon any subsidiary trust company being duly authorized to commence the business for which it is organized, such subsidiary trust company may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for each of its affiliated banks specified in the application, and each such specified affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of each affiliated bank joining in the application is located and shall designate each fiduciary account existing at the date thereof with respect to which such subsidiary trust company requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, to wit:

(a) in the case of an existing fiduciary account which may be revoked, terminated, or amended, each person who, alone or together with others, is empowered to revoke, terminate, or amend the same;

(b) in the case of an existing fiduciary account with respect to which any person other than a court has the power to remove the corporate fiduciary, each person who, alone or together with others, is empowered to remove the corporate fiduciary;

(c) in the case of an existing fiduciary account which is an estate of a deceased person or which is a guardianship or conservatorship, to the clerk of the court in which such estate, guardianship, or conservatorship matter is pending;

(d) in the case of an existing fiduciary account not described in any of the foregoing subsections, to each income beneficiary of such account and to each beneficiary who, were such account terminated at the date of the application respecting such account, would be entitled to share in distributions of income or principal thereof; and

(e) in the case of any existing fiduciary account wherein an affiliated bank specified in the application is acting with a cofiduciary, to each such cofiduciary at his last known address.

(2) When any such application shall have been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and give notice thereof as hereinafter provided. The clerk of court shall cause a copy of such notice to be published at least once a week for 3 successive weeks preceding the hearing date, the first such publication to be at least 25 days preceding the hearing date, such publication to be in a newspaper of general circulation published in each county in which the main office of an affiliated bank specified in the application is located or, if in any case there be no such newspaper, then in a newspaper of general circulation published in a contiguous county. In addition, at least 25 days preceding the hearing date, the clerk of the court shall cause a copy of such notice to be mailed by first-class mail to each person identified in the application as being entitled to mailed notice under the provisions of this part, at his address last known to the applicant as set forth in the application.

(3) The notice to be published and mailed with respect to each such application shall state the time and place of the hearing thereon, the name of the subsidiary trust company which has filed the application, the name of each affiliated bank which has joined in such application, that the application requests that the subsidiary trust company be substituted in every fiduciary capacity for each of its

affiliated banks specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the subsidiary trust company is requested may appear and file objection to substitution and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this part and upon finding that the subsidiary trust company has been duly authorized to commence the business for which it is organized by the department or the comptroller of the currency if the subsidiary trust company is a national banking association, the district court shall enter an order substituting the subsidiary trust company in every fiduciary capacity for each of its specified affiliated banks, excepting as may be otherwise specified in the application and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the subsidiary trust company shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary shall be deemed a designation of the subsidiary trust company substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other instrument of any discretionary power shall be deemed conferred upon the subsidiary trust company deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the subsidiary trust company which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the subsidiary trust company is initially so substituted. Upon substitution pursuant to this section, the bank shall deliver to the subsidiary trust company all assets held by the bank as fiduciary (except assets held for accounts with respect to which there has been no substitution pursuant to this section), and upon such substitution all such assets shall become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance.

History: En. 5-1507 by Sec. 7, Ch. 401, L. 1975; R.C.M. 1947, 5-1507.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Hearings — notice, 32-1-204.

Trustees — duty not to delegate, 72-34-113.

32-1-808. Transfer of fiduciary relationships between affiliated banks. (1) Any bank which has received approval pursuant to 32-1-806 to maintain a trust office in the same building with the main office of any affiliated bank may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for such affiliated bank, and such affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of such affiliated bank is located and shall designate each fiduciary account existing at the date thereof with respect to which the applicant bank requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, who shall be those persons specified in subsections (1)(a) through (1)(e) of 32-1-807.

(2) When any such application has been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and shall cause notice thereof to be given by publication and mailing in the manner required by 32-1-807.

(3) The notice to be published and mailed with respect to each application shall state the time and place of the hearing thereon, the name of the bank which has filed the application, the name of the affiliated bank which has joined in such application, that the application requests that the applicant bank be substituted in every fiduciary capacity for the affiliated bank specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the applicant bank is requested may appear and file objection to substitution and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this part and upon finding that the applicant bank has received the requisite approval from the department or the comptroller of the currency if the applicant bank is a national banking association, the district court shall enter an order substituting the applicant bank in every fiduciary capacity for the affiliated bank designated in the application, excepting as may be otherwise specified in the application and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the applicant bank shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary shall be deemed a designation of the applicant bank substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other such instrument of any discretionary power shall be deemed conferred upon the applicant bank deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the applicant bank which has been substituted as fiduciary for such bank pursuant to this section for the accounting

period during which the applicant bank is initially so substituted. Upon substitution pursuant to this section, the affiliated bank for which substitution has been made shall deliver to such applicant bank all assets held by such affiliated bank as fiduciary (except assets held for accounts with respect of which there has been no substitution pursuant to this section) and upon such substitution all such assets shall become the property of such applicant bank without the necessity of any instrument of transfer or conveyance.

History: En. 5-1508 by Sec. 8, Ch. 401, L. 1975; amd. Sec. 27, Ch. 71, L. 1977; R.C.M. 1947, 5-1508.

Cross-References

Trustees — duty not to delegate, 72-34-113.

Judicial proceedings concerning trusts, Title 72, ch. 35.

Part 9

Removal of Directors or Officers of Financial Institutions

Part Cross-References

Theft, 45-6-301.

Issuing bad check, 45-6-316.

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

32-1-901. Definitions. For purposes of this part, the following definitions shall apply:

(1) "Board member" means a member of the board of directors of the institution.

(2) "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order or an order issued by the director with the consent of the institution or the board member, officer, or other person concerned, with respect to which no timely petition for review of the action of the director has been filed in a district court as specified in 32-1-908(2) or with respect to which the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

(3) "Director" means the director of the department of commerce.

(4) "Institution" means a commercial bank, savings bank, trust company, or investment company chartered under Title 32, chapter 1.

(5) "Violation" includes without limitation any action, alone or with others, causing, counseling, aiding, or abetting a violation.

History: En. Sec. 1, Ch. 76, L. 1979; amd. Sec. 2, Ch. 274, L. 1981.

32-1-902. Notice of charges — hearing — cease and desist order — effective date. (1) If the director has reasonable cause to believe that any institution is engaging or has engaged or is about to engage in an unsafe or unsound practice in conducting the business of such institution or is violating, has violated, or is about to violate a law or rule, the director may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution.

(2) The hearing may not be earlier than 30 days or later than 60 days after service of the notice unless an earlier or a later date is set by the director at the request of the institution. Unless the institution appears at the hearing by a duly authorized representative, it shall be considered to have consented to the issuance of the cease and desist order. In the event of such consent or if upon the record

made at any such hearing the director finds that any unsafe or unsound practice or violation specified in the notice of charges has been established by the preponderance of the evidence, the director may issue and serve upon the institution an order to cease and desist from any such practice or violation. By provisions which may be mandatory or otherwise, the order may require the institution and its board members, officers, employees, and agents to cease and desist from such practice or violation and to take affirmative action to correct the conditions resulting from any such practice or violation.

(3) A cease and desist order becomes effective at the expiration of 45 days after the service of the order upon the institution, except in the case of an order issued upon consent which is effective at the time specified therein, and remains effective and enforceable as provided therein, except to the extent it is stayed, modified, terminated, or set aside by the action of the director or a reviewing court.

History: En. Sec. 2, Ch. 76, L. 1979.

Cross-References

Contested cases — notice, 2-4-601.

Hearings — notice, 32-1-204.

Sale of securities by officer to bank, 32-1-463.

Fraud by director, officer, or employee, 32-1-464.

Overdraft by officer or employee — receiving personal profit from loan, 32-1-465.

Purchase of obligation of bank by officer, 32-1-466.

Loans to managing officer or director, 32-1-467.

Removal of directors, officers, or employees, 32-1-468.

Penalty for unlawful hypothecation of property, 32-1-471.

Theft of bank funds by officers or employees, 32-1-473.

32-1-903. Informal conferences — time for application. Within 15 days after service of the notice of charges, either the institution or department may request an informal conference to discuss the charges and the possible disposition of them without a formal hearing process. The conference shall be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the director in his discretion may withdraw charges and proceedings for a cease and desist order.

History: En. Sec. 3, Ch. 76, L. 1979.

Cross-References

Examination and supervision by Department, 32-1-211.

32-1-904. Temporary cease and desist order — grounds for issuance — effective date — injunctive relief. (1) Whenever the director determines that any violation or threatened violation or any unsafe or unsound practice specified in the notice of charges served upon the institution pursuant to 32-1-902(1) or the continuation thereof is likely to cause insolvency or substantial dissipation of assets or earnings of the institution or is likely to otherwise seriously prejudice the interests of its depositors, the director may issue a temporary order requiring the institution to cease and desist from such violation or practice. Such order shall contain a statement of the facts constituting the alleged violation or unsafe or unsound practice. The order is effective upon service upon the institution and unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2) of this section remains effective and enforceable until the completion of the administrative proceedings pursuant to such notice of charges, until the director dismisses the charges specified in the notice, or until a cease and desist order which is issued against the institution after the hearing becomes effective.

(2) Within 10 days after the institution has been served with a temporary cease and desist order, the institution may apply to the district court for the county in which the home office of the institution is located for an injunction setting aside,

limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings held pursuant to the notice of charges served upon the institution under 32-1-902(1). The court has jurisdiction to issue the injunction.

History: **En. Sec. 4, Ch. 76, L. 1979.**

Cross-References

Injunctions, Title 27, ch. 19.

32-1-905. Notice of intention to remove board member or officer or to prohibit participation — suspension. (1) The director may serve upon a board member or officer of an institution a written notice of intention to remove him from office whenever the director has reasonable cause to believe:

(a) the board member or officer has:

(i) committed any violation of law involving dishonesty or breach of trust;

(ii) violated a cease and desist order which has become final;

(iii) engaged or participated in any unsafe or unsound practice in connection with the institution; or

(iv) committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as a board member or officer of the institution; and

(b) the institution has suffered or will probably suffer substantial financial loss or other damage or the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty involving personal dishonesty on the part of such board member or officer.

(2) Whenever in the opinion of the director any board member or officer of an institution has, by conduct or practice with respect to another institution or business organization which has resulted in substantial financial loss or other damage to that institution or business organization, evidenced his personal disability and unfitness to continue as a board member or officer of the institution, and whenever the director has reasonable cause to believe that any other person participating in the conduct of the affairs of an institution has, by conduct or practice with respect to such institution, another institution, or other business organization which has resulted in substantial financial loss or other damage to the institution or business organization, evidenced his personal disability and unfitness to participate in the conduct of the affairs of such institution, the director may serve upon the board member, officer, or other person a written notice of intention to remove such person from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(3) A notice of intention to remove a board member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an institution shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. The hearing shall be held not earlier than 30 days or later than 60 days after the date of service of the notice, unless an earlier or later date is set by the director at the request of the board member, officer, or other person and for good cause shown.

(4) Unless the board member, officer, or other person appears at the hearing in person or by a duly authorized representative, he shall be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established by the preponderance of the evidence, the director may issue such orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution as he

considers appropriate. The order becomes effective 30 days after service upon the institution and the board member, officer, or other person concerned, except in the case of an order issued upon consent which becomes effective at the time specified therein. The order remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

History: **En. Sec. 5, Ch. 76, L. 1979.**

Cross-References

False statements and entries considered felony, 32-1-236.

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

Fraud by director, officer, or employee, 32-1-464.

Removal of directors, officers, or employees, 32-1-468.

Theft of bank funds by officers or employees, 32-1-473.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

Tampering with public records or information, 45-7-208.

32-1-906. Informal conferences — time for application. Within 15 days after service of the notice of charges, either the board member, officer, or other person may request an informal conference to discuss the charges and the possible disposition of them without formal hearing process. The conference shall be carried out in accordance with the provisions of 2-4-603. Upon a proper showing the director in his discretion may withdraw charges and proceedings for a cease and desist order.

History: **En. Sec. 6, Ch. 76, L. 1979.**

Cross-References

Examination and supervision by Department, 32-1-211.

32-1-907. Suspension or prohibition effective upon service — stay. (1) With respect to any board member or officer of an institution or any other person to whom notice is sent pursuant to 32-1-905, if the director considers it necessary for the protection of the institution or the interests of its depositors that the board member, officer, or other person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the director may serve upon such board member, officer, or other person a written notice suspending him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution. The notice shall contain a statement of the facts constituting grounds for the order and shall fix a time, not later than 10 days from the date of the service of the notice, at which a hearing will be held to afford the board member or officer the opportunity to respond. The suspension or prohibition is effective upon service of the notice and unless stayed by a court in proceedings authorized by subsection (2) of this section shall remain in effect until the completion of the administrative proceedings pursuant to the notice served under 32-1-904, until such time as the director dismisses the charges specified in such notice, or until the order of removal or prohibition which is issued against the board member, officer, or other person becomes effective. Copies of the notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs he has participated.

(2) Within 10 days after the hearing provided for in subsection (1) of this section, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the board member, officer, or other person under 32-1-904. The court has jurisdiction to stay the suspension or prohibition.

History: **En. Sec. 7, Ch. 76, L. 1979.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Removal of directors, officers, or employees, 32-1-468.

32-1-908. Felony charges — suspension or prohibition. (1) Whenever any board member or officer of an institution or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the commission of or participation in a felony involving dishonesty or breach of trust, the director by written notice served upon the board member, officer, or other person may suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution. Suspension is effective upon service upon the individual. The notice shall contain a statement of the facts constituting grounds for the order and shall fix a place and time, not later than 10 days from the date of the notice, at which a hearing will be held to afford the board member or officer the opportunity to respond. A copy of the notice shall also be served upon the institution. The suspension or prohibition remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the director.

(2) Within 10 days after the hearing provided for in subsection (1) of this section, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal proceedings initiated by the information, indictment, warrant, or complaint. The court has jurisdiction to stay the suspension or prohibition.

(3) If a judgment of conviction with respect to the offense is entered against the board member, officer, or other person and at such time as the judgment is not subject to further appellate review, the director may issue and serve upon the board member, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution except with the consent of the director. A copy of the order shall also be served upon the institution, whereupon the board member or officer shall cease to be a board member or officer of the institution. A finding of not guilty or other disposition of the charge does not preclude the director from thereafter instituting proceedings to suspend or remove the board member, officer, or other person from office or to prohibit further participation in the affairs of the institution pursuant to 32-1-905 or 32-1-906.

History: En. Sec. 8, Ch. 76, L. 1979.

Cross-References

Hearing — rules of evidence, cross-examination, and judicial notice, 2-4-612.

False statements and entries considered felony, 32-1-236.

Fraud by director, officer, or employee, 32-1-464.

Removal of directors, officers, or employees, 32-1-468.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

Filing of information, Title 46, ch. 11, part 2.

32-1-909. Board of directors — lack of quorum — temporary board members. If at any time because of the suspension or removal of one or more board members pursuant to this part the board of directors of an institution has less than a quorum of board members not so suspended or removed, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the board members not so suspended or removed until such time as there is a quorum of the board members. If all of the board members have been suspended or removed, the director shall appoint persons to serve temporarily as board members, pending the termination of the suspensions or removals or until such time as their successors are duly elected and take office.

History: **En. Sec. 9, Ch. 76, L. 1979.**

Cross-References

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

32-1-910. Hearings — decision — review, modification, termination or stay of orders. (1) Any hearing provided for in this part shall be conducted in accordance with the provisions of the Montana Administrative Procedure Act. The hearing shall be private unless the director, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the director has notified the parties that the case has been submitted to him for final decision, he shall render his decision, which shall include findings of fact upon which his decision is predicated, and shall issue and serve upon each party to the proceeding an order consistent with the provisions of this section.

(2) Any party to the hearing or any person required by an order issued under this part to cease and desist from any of the violations or practices stated therein or any person suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other than a consent order, which review shall be pursuant to the Montana Administrative Procedure Act. Unless a petition for review is timely filed as provided in the Montana Administrative Procedure Act, the director, at any time, upon such notice and in such manner as he considers proper, may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the director may modify, terminate, or set aside the order with the permission of the court.

History: **En. Sec. 10, Ch. 76, L. 1979.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Montana Administrative Procedure Act, Title 2, ch. 4.

Judicial review of contested cases, Title 2, ch. 4, part 7.

32-1-911. Notices and orders — manner of service — copies to federal authorities. Any service required or authorized to be made by the director pursuant to this part shall be made upon individual board members and officers by personal service and may be made upon institutions by registered or certified mail or in such other manner reasonably calculated to give actual notice as the director by rule or otherwise may provide. Copies of any notice or order served by the director pursuant to the provisions of this part upon any institution or any board member or officer thereof or other person participating in the conduct of its affairs may also be sent to the appropriate federal supervisory authorities.

History: **En. Sec. 13, Ch. 76, L. 1979.**

Cross-References

Confidentiality — penalties, 32-1-234.

32-1-912. Enforcement of notices or orders. The director may apply to the district court of the county in which the home office of the institution is located or to the district court for Lewis and Clark County for the enforcement of any effective and outstanding notice or order issued under this part. The court has jurisdiction to require compliance therewith.

History: **En. Sec. 11, Ch. 76, L. 1979.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Judicial remedies defined, 27-1-101.

32-1-913 through 32-1-920 reserved.

32-1-921. Violation of notice or final order — penalties. Any present or former board member or officer of an institution or any other person against whom there is outstanding and effective any notice or final order served upon the board member, officer, or other person pursuant to 32-1-905, 32-1-907, or 32-1-908 who participates in any manner in the conduct of the affairs of such institution; directly or indirectly solicits, procures, transfers, or attempts to transfer votes or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such institution; or without the prior written approval of the director, votes for a board member or serves as a board member, officer, or employee of such institution is guilty of a misdemeanor and may be fined not more than $1,000 or imprisoned for not more than 6 months, or both.

History: En. Sec. 12, Ch. 76, L. 1979.

Cross-References

Persons previously convicted under banking laws — bank employment, 32-1-462.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Part 10

Fiduciary Foreign Trust Companies

Part Cross-References

Foreign personal representatives and ancillary administration, Title 72, ch. 4.

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31.

Trust Code — general provisions, Title 72, ch. 33.

Trust administration, Title 72, ch. 34.

32-1-1001. Definition of foreign trust company. (1) For the purposes of this part, the term "foreign trust company" includes each banking and trust association or corporation organized under the laws of any state other than Montana that has the power to act as trustee, guardian, or conservator and each national banking association that maintains its principal office in any state other than Montana that has been granted permission by the comptroller of the currency to act in a fiduciary capacity under the provisions of 12 U.S.C. 92a, as amended.

(2) A foreign trust company acting pursuant to this part is not a foreign corporation regulated by 32-1-103 or 32-1-402.

History: En. Sec. 1, Ch. 290, L. 1993.

32-1-1002. Appointment of foreign trust companies. (1) A foreign trust company from a state offering reciprocity, as provided in subsection (2), may accept an appointment and act as:

(a) the trustee of any trust created by will, indenture, or other instrument by a person residing in this state, a corporation with its principal offices in this state, or a political entity located in this state;

(b) a guardian or conservator of the person, estate, or both person and estate of any resident of this state;

(c) an executor of the will or administrator of the estate of a decedent who was a resident of the state in which the foreign trust company maintains its principal office at the time of death, in ancillary probate proceedings in this state; and

(d) a guardian or conservator in ancillary proceedings in this state with respect to the property of a resident of the state in which the foreign trust company maintains its principal office.

(2) A foreign trust company may accept appointments in this state if banking or trust associations or corporations organized under the laws of this state or national banking associations that maintain their principal offices in this state are permitted to act as trustees, guardians, or conservators in the state in which the foreign trust company maintains its principal office.

History: En. Sec. 2, Ch. 290, L. 1993.

32-1-1003. Designation of attorney for service of process. Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall appoint the secretary of state as its attorney for the service of all legal process in any action or proceedings involving any acts or defaults by it as trustee, guardian, or conservator. The appointment is irrevocable. Service upon the secretary of state as attorney is as valid and binding as if personal service were made upon the foreign trust company.

History: En. Sec. 3, Ch. 290, L. 1993.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

32-1-1004. Service of process. Service of process under this part may be made by delivering a copy of the papers to be served to the secretary of state personally or by filing a copy in the secretary of state's office, accompanied by one additional copy for each foreign trust company to be served. The secretary of state shall, no later than the business day following the date of service, mail to each served foreign trust company, by certified mail, a copy of papers that were served. The copies must be mailed to the address shown for each foreign trust company in the records of the office of the secretary of state.

History: En. Sec. 4, Ch. 290, L. 1993.

32-1-1005. Bond. Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount as the court directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee, guardian, or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department of commerce, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of a sufficient amount to meet the requirements of 32-1-307 for a trust company organized under the laws of this state. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under this part. A foreign trust company is not required to file a bond or certify the deposit of its capital with respect to a trust, created other than a trust created by a will, if the trust instrument requests or directs that a bond is not required of the trustee.

History: En. Sec. 5, Ch. 290, L. 1993; amd. Sec. 139, Ch. 42, L. 1997.

32-1-1006. Rights and duties. A foreign trust company acting as trustee, guardian, or conservator has the rights, authority, and duties that a natural person resident in this state duly acting as trustee, guardian, or conservator has under the laws of this state.

History: En. Sec. 6, Ch. 290, L. 1993.

32-1-1007. Solicitation of business. A foreign trust company may conduct business in Montana only in accordance with rules promulgated by the department of commerce.

History: En. Sec. 7, Ch. 290, L. 1993.

CHAPTER 2

BUILDING AND LOAN ASSOCIATIONS

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Chapter Cross-References

Home owners' loan corporation and housing bonds — investments and security, 7-15-4504, 7-15-4505, 17-6-103, 32-1-424, 32-2-406, 72-31-102.

Taxation of association, 15-24-801.

Credit Transactions and Relationships, Title 31.

Definition of regulated lender, 31-1-111.

Insurance premium finance companies, Title 33, ch. 14.

Discrimination prohibited in financial transactions, 49-2-305, 49-2-307, 49-3-206.

Montana Uniform Transfers to Minors Act, Title 72, ch. 26.

Part 1

General Provisions

32-2-101. Purpose — definitions. (1) A corporation operated for the purpose of encouraging home ownership and thrift and making substantially all of its loans on real estate mortgage security shall be known in this chapter as a building and loan association or a savings and loan association and is under the supervision of the department, which shall enforce all laws with respect to it.

(2) The associations have continual succession and shall be organized under the provisions of this chapter.

(3) When used in this chapter, the following definitions apply:

(a) "Building and loan association" includes savings and loan associations organized under this chapter.

(b) "Capital stock" means the aggregate of shares of nonwithdrawable capital issues by a capital stock association.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(d) "Member" means:

(i) a person holding a savings account of a mutual association;

(ii) a person borrowing from or assuming or obligated upon a loan or an interest therein held by the association;

(iii) a person purchasing property securing a loan or interest therein held by such association; or

(iv) any other person obligated to the association.

(e) "Mutual association" means a building and loan association formed without authority to issue stock.

(f) "Savings account" means that part of the savings liability of the association which is credited to the account of the holder thereof and includes any form of withdrawable deposit.

(g) "Stock association" means a building and loan association formed with authority to issue stock.

(h) "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association organized and operating pursuant to the provisions of this chapter.

(4) For the purposes of subsection (3)(d), a joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership.

History: Ap. p. Sec. 1, Ch. 57, L. 1927; re-en. Sec. 6355.1, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1945; amd. Sec. 1, Ch. 68, L. 1949; amd. Sec. 69, Ch. 431, L. 1975; Sec. 7-101, R.C.M. 1947; Ap. p. Sec. 13, Ch. 57, L. 1927; re-en. Sec. 6355.14, R.C.M. 1935; Sec. 7-115, R.C.M. 1947; R.C.M. 1947, 7-101, 7-115; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 5, L. 1983.

Cross-References

Powers and duties of building and loan associations, 32-2-401.

32-2-102. Fees paid into state treasury. All fees provided for in this chapter and paid to the department or secretary of state shall be by them turned in to the state treasury for the credit of the state special revenue fund for the use of the department in its examination function.

History: En. Sec. 27, Ch. 57, L. 1927; amd. Sec. 1, Ch. 10, L. 1931; re-en. Sec. 6355.28, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-129; amd. Sec. 3, Ch. 600, L. 1985.

Cross-References

State finance — fund structure, 17-2-102.

32-2-103. Application of chapter. (1) The provisions of this chapter shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees, or combinations of persons, whether foreign or domestic and whether citizens of this state or otherwise, that transact or attempt to transact a building and loan business or a business of like kind or character or where, by its or their charter, constitution, bylaws, or by a declaration of trust or other device or by a contract or agreement, the members or customers are required to pay regular installments to a common fund or series from which loans are made to said members, customers, or to others for the purpose of building homes or buildings, purchasing building sites, paying off liens or debts against real estate, or for other purposes within the boundaries of this state.

(2) The name association when used in this chapter shall be deemed to include any of the above-named.

(3) This chapter does not apply to foreign associations with relation to the purchasing of or participating in loans secured by mortgages, trust indentures, or other security interests in real or personal property if there is no activity conducted by the out-of-state lender in Montana with respect to the loan except periodic inspection of the security.

History: En. Sec. 28, Ch. 57, L. 1927; re-en. Sec. 6355.29, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1977; R.C.M. 1947, 7-130.

Cross-References

Foreign associations — requirements, 32-2-261.

32-2-104. Conformity required. (1) The powers, rights, duties, privileges, and obligations of every association organized and doing business in a form similar to that authorized by this chapter shall be governed, controlled, construed, extended, limited, and determined by the provisions of this chapter to the same extent and effect as if the association had been organized and incorporated under or pursuant to its provisions, and the articles of incorporation, bylaws, and rules of each heretofore made or existing are hereby modified, altered, and amended to conform with the provisions of this chapter, and the same are declared void where the articles of incorporation, bylaws, or rules are inconsistent with its provisions; except that the obligations of any existing association, whether between the association and its shareholders or any one of them or any other person or persons or any valid contract between the shareholders of the association existing on May 1, 1927, shall not be in any way impaired by the provisions of this chapter.

(2) With these exceptions every building and loan association shall possess the powers, rights, duties, and privileges and be subject to the obligations, restrictions, and liabilities conferred and imposed by this chapter, notwithstanding anything to the contrary in its articles of incorporation, bylaws, or rules.

(3) All obligations to the association heretofore contracted shall be enforceable by it and in its name, and demands, claims, and rights of action against the association shall be enforced against it as fully and completely as they might have been enforced before.

(4) Except as above set forth, on and after September 7, 1927, no domestic or foreign association engaged as of March 7, 1927, in the business of a building and loan association or a business of like character shall be permitted to conduct that business in this state unless it complies in every respect with the provisions of this chapter.

History: **En. Sec. 34, Ch. 57, L. 1927; re-en. Sec. 6355.35, R.C.M. 1935; amd. Sec. 81, Ch. 431, L. 1975; R.C.M. 1947, 7-136.**

Cross-References

Business corporations — formation — articles of incorporation — bylaws, Title 35, ch. 1, part 2.

32-2-105. Laws of other states — reciprocity. When by the laws of any other state, territory, or nation any taxes, fines, penalties, licenses, fees, deposits of money or securities, or other obligations or prohibitions are imposed on building and loan associations of this state doing business in such other state, territory, or nation, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions shall be imposed on the associations of such other state, territory, or nation doing or attempting to do a building and loan business or a business of like kind or character in this state and upon their agents herein.

History: **En. Sec. 33, Ch. 57, L. 1927; re-en. Sec. 6355.34, R.C.M. 1935; R.C.M. 1947, 7-135.**

Cross-References

National bank powers extended to state banks, 32-1-362.

32-2-106. Penalties. (1) It shall be unlawful for any association, whether foreign or domestic and whether citizens of this state or otherwise, to do business or attempt to do business, as defined in this chapter, without having first complied with its provisions and having received a certificate of authority to do business from the department. Any such association violating any of the provisions of this chapter and failing to comply with any of its provisions shall be fined not less than $250 or more than $1,000 for each and every such violation, to be recovered by an action in the name of the state and on collection, except when collected by a justice's court, paid into the state treasury.

(2) Any person or persons, whether citizens of this state or otherwise, who aid or assist any such association to do business contrary to the provisions of this chapter without having first complied with all of its provisions shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than $500 or imprisoned not more than 6 months, or both.

History: **En. Sec. 35, Ch. 57, L. 1927; re-en. Sec. 6355.36, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-137; amd. Sec. 19, Ch. 557, L. 1987.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Treasury funds and accounts, Title 17, ch. 2, part 1.

Capital stock requirements — investigation — certificate of incorporation — how issued, 32-2-205.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-2-107. Obtaining property by fraud — false report — refusal to permit inspection of books. A director, officer, agent, or employee of a building and loan association is guilty of a felony who:

(1) willfully receives or possesses any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or direct to be made a full and true entry of it in its books and accounts;

(b) concurs in omitting to make a material entry thereof;

(2) willfully makes or concurs in making or publishing a written report, exhibit, or statement of the association's affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of the association's books, willfully refuses or neglects to make a proper entry in the books as required by law or to exhibit or allow them to be inspected and extracts to be taken from them by the department.

History: En. Sec. 37, Ch. 57, L. 1927; re-en. Sec. 6355.38, R.C.M. 1935; amd. Sec. 83, Ch. 431, L. 1975; amd. Sec. 30, Ch. 71, L. 1977; R.C.M. 1947, 7-139.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Banks — fraud by director, officer, or employee, 32-1-464.

Department report, 32-2-306.

Reports and examinations by Department confidential, 32-2-307.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

32-2-108. Purchase of obligations of association by officer. No director, officer, agent, or other employee of any building and loan association shall, directly or indirectly, for his own personal benefit, purchase or be interested in the purchase of any obligation of said association for a less sum than shall appear upon the books of such association to be the value thereof. Every person violating the provisions of this section shall for each offense forfeit to the state three times the face value of any such obligation so purchased.

History: En. Sec. 38, Ch. 57, L. 1927; re-en. Sec. 6355.39, R.C.M. 1935; R.C.M. 1947, 7-140.

Cross-References

Purchase of obligation of bank by officer, 32-1-466.

32-2-109. Purchase of assets of association by officer. No officer, director, agent, or other employee of any association shall, directly or indirectly, for his own personal benefit, purchase or be interested in the purchase of any of the assets of any building and loan association for a less sum than the book value thereof. Every person violating any provision of this section shall for each offense forfeit to the state twice the nominal value of any such assets so purchased.

History: En. Sec. 39, Ch. 57, L. 1927; re-en. Sec. 6399.40, R.C.M. 1935; R.C.M. 1947, 7-141.

32-2-110. Payments to be made by building and loan associations. For the credit of the state special revenue fund for the use of the department in its examination function, each building and loan association under the supervision of the department shall pay to the state treasurer, on or before July 1 each year, a fee established by the department by rule on or before June 1 of each year. The fees must be set to recover all of the costs of the program of supervision of building and loan associations.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; re-en. Sec. 6014.83, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1959; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-909; amd. Sec. 4, Ch. 600, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State finance — fund structure, 17-2-102.

32-2-111. Equality of rights. With the approval of the department, a building and loan association chartered pursuant to the laws of this state may exercise or possess any right, power, privilege, benefit, immunity, or exemption possessed by a federal savings and loan association doing business in this state that is now provided or that may be provided after April 29, 1981, by the laws of the United States or regulations of the federal home loan bank board. This grant is in addition to grants provided in and takes priority over any statute of this state. The department may exercise the discretion granted in this section by issuance of a special order upon written request from any state-chartered building and loan association with respect to any particular item and may grant such request upon such conditions as it shall determine are in the best interest of the members or depositors of the association and of the general public. The department shall require any state-chartered building and loan association seeking such special orders to obtain and maintain insurance of accounts acceptable to the department, excluding alien insurers.

History: En. Sec. 1, Ch. 558, L. 1981.

Cross-References

National bank powers extended to state banks, 32-1-362.

Part 2

Organization and Reorganization

Part Cross-References

Corporation license tax rate and return — banks and savings and loan associations, Title 15, ch. 31, part 7.

32-2-201. Articles of incorporation — contents. Whenever any number of persons, not less than five, desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this chapter, they shall prepare and file articles of incorporation to that effect in the manner specified in this chapter. Such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) the name of the association, which may not be the same as or too closely resemble that in use by any existing corporation established under the laws of this state. The words "building and loan association" or "savings and loan association" shall form a part of the name, and a corporation not organized under this chapter may not use a name embodying that combination of words, provided that the associations existing as of May 1, 1927, may continue their present names.

(2) the principal office or place of business of the association, which shall be within this state;

(3) if a capital stock association, the aggregate number of shares which the corporation will have authority to issue;

(4) a provision that such association is organized under this chapter for the purposes herein expressed;

(5) the names and residences of the persons who subscribed and acknowledged the declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators.

History: En. Sec. 2, Ch. 57, L. 1927; re-en. Sec. 6355.2, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1949; amd. Sec. 28, Ch. 71, L. 1977; R.C.M. 1947, 7-102; amd. Sec. 2, Ch. 5, L. 1983.

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Capital stock defined, 32-2-101.

32-2-202. Certified copy of articles prima facie evidence. A certified copy of any articles of incorporation filed in pursuance of this chapter must be received in all courts and other places as prima facie evidence of the facts therein stated.

History: En. Sec. 3, Ch. 57, L. 1927; re-en. Sec. 6355.3, R.C.M. 1935; R.C.M. 1947, 7-103.

Cross-References

Contents of writings, recordings, and photographs — requirement of original, Rule 1002, M.R.Ev. (see Title 26, ch. 10).

32-2-203. Evidence of corporate existence or capacity. The certificate issued by the secretary of state in pursuance of 32-2-205 or a certificate issued by the department setting forth that any association, domestic or foreign, has fully complied with the provisions of this chapter and is lawfully authorized to transact business in this state shall be admitted in evidence in all courts in this state and shall be prima facie evidence of the corporate character and capacity of such association and of its right to transact business in this state, excepting in an action prosecuted by the state in the nature of quo warranto.

History: En. Sec. 4, Ch. 57, L. 1927; re-en. Sec. 6355.4, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-104.

Cross-References

Quo warranto, Title 27, ch. 28.

32-2-204. Bylaws. (1) Contemporaneously with or immediately following the execution of said articles of incorporation provided for in 32-2-201, the incorporators then acting in the capacity of directors shall adopt appropriate bylaws to govern and prescribe the methods and the officers by whom the business of the association shall be conducted.

(2) The bylaws shall be in conformity with the provisions of this chapter and at all times during the regular hours of business shall be open to the inspection of the members at its principal place of business.

(3) The bylaws, among other things, shall especially provide for:

(a) the character and method of conducting the business of the association, with rules governing the addition of members, the sale of its shares, the amount of membership fee;

(b) the annual meeting of the shareholders;

(c) the annual election and qualification of directors and the term or period during which the directors shall serve, provided that the term or period for all directors shall not be less than 1 or more than 3 years and that the directors shall be so elected that as near as possible the term of an equal number shall expire each year;

(d) the appointment of officers;

(e) the adoption, ratification, and amendment of the bylaws, which adoption, ratification, and amendment may be made either by the stockholders or board of directors;

(f) the method of voting at such annual meeting; and

(g) the periodical investigation of the business and condition of such association.

(4) No bylaws and no change or amendment thereof shall be effective until first approved by the department, and no association shall commence the transaction of business as such until the bylaws are first approved by the department.

History: En. Sec. 5, Ch. 57, L. 1927; re-en. Sec. 6355.5, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-105.

Cross-References

Banks and trust companies — bylaws, 32-1-308.

32-2-205. Investigation — certificate of incorporation, how issued. (1) (a) When the articles of incorporation are in proper form and regularly executed and the bylaws have been duly approved as required in 32-2-204 and, in the case of a mutual association, the requirements of 32-2-232 have been complied with or, in the case of a capital stock association, the requirements of 32-2-241 have been complied with, the department shall then ascertain from the best sources of information at its command the responsibility, character, and general fitness of the incorporators. The department shall also determine whether there is a reasonable need for the existence of the association and whether the public convenience and advantage will be promoted by its existence.

(b) If the department is not satisfied with the result of its investigations of the matters specified in this section, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, refuse to issue the certificate described in this section.

(c) If it is satisfied with the result of its investigations, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, issue under its official seal a certificate reciting in substance the filing in its office of the articles of incorporation and bylaws.

(2) (a) The certificate shall also state that the articles and bylaws conform to all the requirements of this chapter, that the department has approved them and that it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this chapter and the bylaws, that there is a reasonable need for the existence of the building and loan association, and that the public convenience and advantage will be promoted thereby.

(b) The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the department. The other three shall be returned to the incorporators, who shall immediately file one copy with the secretary of state and one with the clerk and recorder of the county in which the principal place of business of the association is located. The other copy shall be retained by the association.

(c) Immediately upon the receipt of the certified copy, the secretary of state shall issue a certificate of incorporation, at which time the incorporation of the association is complete.

History: En. Sec. 6, Ch. 57, L. 1927; re-en. Sec. 6355.6, R.C.M. 1935; amd. Sec. 70, Ch. 431, L. 1975; R.C.M. 1947, 7-106; amd. Sec. 3, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — amount of capital, 32-1-307.

32-2-206. Directors — meetings — officers. (1) The conduct and management of the affairs and business of such association shall be vested in a board of directors which shall consist of not less than five or more than nine members.

(2) Within 30 days after the corporate existence of an association begins, the directors of the association shall hold an organizational meeting and shall elect officers pursuant to the provisions of this chapter and the bylaws. At the organizational meeting the directors shall take such other action as is appropriate in connection with beginning the transaction of business by the association. The department may extend, by order, the time within which the organizational meeting must be held.

(3) The incorporators of the association shall serve as directors until the first meeting of the stockholders to be held at the time provided for by this chapter or

until their successors are elected and qualified, after which the directors shall be elected by the stockholders of the association in accordance with the provisions of this chapter and the bylaws of the association.

(4) The directors, unless it is otherwise provided by the bylaws of the association, shall elect or appoint all the officers of the association. Such directors when appointed or elected shall file with the department their oath of office, as provided in election or appointment of bank directors. Meetings of the board of directors must be held at least once each month.

History: En. Sec. 7, Ch. 57, L. 1927; re-en. Sec. 6355.7, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-107; (2)En. Sec. 29, Ch. 5, L. 1983.

Cross-References

Banks — board of directors — oath of office, 32-1-322.

Business corporations — directors and officers, Title 35, ch. 1, part 4.

32-2-207. Removal of directors. No director shall be removed from office except as herein provided or by a vote of the members of a mutual association representing two-thirds of the withdrawable deposits in the association or the stockholders of a capital stock corporation holding two-thirds of the capital stock, at a general meeting held after previous notice given in the manner provided in 32-2-209. Meetings of the members or stockholders for this purpose may be called by the president or by a majority of the directors or by stockholders holding not less than 25% of the capital stock.

History: En. Sec. 8, Ch. 57, L. 1927; re-en. Sec. 6355.9, R.C.M. 1935; R.C.M. 1947, 7-109; amd. Sec. 4, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — removal of directors, officers, or employees, 32-1-468.

Removal of directors, officers, or employees, 32-2-304.

32-2-208. Meetings of members or stockholders. (1) The meetings of the members or stockholders of a Montana building and loan association must be held at its office or principal place of business in this state.

(2) In its bylaws, such association shall provide for at least one regular meeting of members or stockholders annually. Notice of any meeting, whether regular or special, shall be given by the secretary in accordance with 32-2-209. The board of directors shall have the right to call a special meeting at any time. The board of directors must also call a special meeting whenever petitioned to do so by:

(a) members of a mutual association representing at least 25% of the withdrawable deposits of the association; or

(b) stockholders owning at least 25% of the issued stock.

(3) The secretary shall call special meetings in the same manner as provided in 32-2-209.

History: En. Sec. 9, Ch. 57, L. 1927; re-en. Sec. 6355.10, R.C.M. 1935; R.C.M. 1947, 7-110; amd. Sec. 5, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — selection of officers and employees — meetings and minutes, 32-1-325.

32-2-209. Notice of meetings. (1) At least 30 days prior to any annual or special meeting of any association, a notice stating the time and place of the meeting shall be deposited in the post office at the principal place of business of such association, directed to each member or stockholder at his address, as the same appears at the time on the books of the association, and when so deposited, postage prepaid, shall be deemed a legal and sufficient notice of any meeting.

(2) In addition thereto notice may be given by four consecutive weekly publications in a newspaper published in the county where the association has its principal place of business. Such publication shall be complete on the day of the fourth publication.

(3) In notices of special meetings there shall be attached to and accompanying such notice a statement of any matter or matters to be considered at said meeting.

(4) All members or stockholders of the association shall be entitled to vote at the meetings in person or by proxy.

History: En. Sec. 10, Ch. 57, L. 1927; re-en. Sec. 6355.11, R.C.M. 1935; R.C.M. 1947, 7-111; amd. Sec. 6, Ch. 5, L. 1983.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of such association to mail to every member or stockholder of such association a blank form of proxy, and the member or stockholder may withdraw his former proxy and substitute another in its stead. Every proxy shall continue in force and be binding upon the member or stockholder until such proxy is revoked or another substituted.

History: En. Sec. 11, Ch. 57, L. 1927; re-en. Sec. 6355.12, R.C.M. 1935; amd. Sec. 29, Ch. 71, L. 1977; R.C.M. 1947, 7-112; amd. Sec. 7, Ch. 5, L. 1983.

32-2-211. Transfer of stock or account — effect. (1) The delivery of a capital stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign, or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such transfer is recorded upon the books of the building and loan association or a new certificate is issued to the person to whom it has been transferred.

(2) A savings account or any interest therein is transferable on the books of the association only upon proper written application and acceptance by the association of the transferee as a member, subject to terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof without being affected by any notice to the contrary unless the association has acknowledged in writing the receipt of notice of a pledge of the savings account.

History: En. Sec. 14, Ch. 57, L. 1927; re-en. Sec. 6355.15, R.C.M. 1935; R.C.M. 1947, 7-116; amd. Sec. 8, Ch. 5, L. 1983.

32-2-212. Requirements of transfer in certain cases. When a certificate of stock or a savings account in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of such association, before entering any transfer of such stock or account on its books or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred and may also require from the attorney, agent, or claimant a bond of indemnity, with a surety or sureties satisfactory to the officers of such association, to protect such association against any liability to the owner, assignee, or transferee of such shares or account or the legal representatives of the owners of such shares or account, in case of his or her death before the transfer, and also to protect the association against any liability accruing or resulting by reason of said lost or original certificate being thereafter presented to it. If the affidavit or other evidence or bond is not furnished when required as herein provided, neither the association nor any officer thereof shall be liable for refusing to enter the transfer on the books of the association.

History: En. Sec. 15, Ch. 57, L. 1927; re-en. Sec. 6355.16, R.C.M. 1935; R.C.M. 1947, 7-117; amd. Sec. 9, Ch. 5, L. 1983.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Suretyship, Title 28, ch. 11, part 4.

32-2-213 through 32-2-220 reserved.

32-2-221. Renumbered 32-2-261 by Code Commissioner, 1983.

32-2-222. Renumbered 32-2-262 by Code Commissioner, 1983.

32-2-223. Renumbered 32-2-263 by Code Commissioner, 1983.

32-2-224. Renumbered 32-2-264 by Code Commissioner, 1983.

32-2-225 through 32-2-230 reserved.

32-2-231. Renumbered 32-2-271 by Code Commissioner, 1983.

32-2-232. Organization of mutual associations. The incorporators of a mutual association shall appoint one of their number as chairman of the incorporators, and he shall procure from a surety company or other surety acceptable to the department a surety bond in an amount no less than the sum of the amount subscribed by the incorporators and the amount of the expense fund described in 32-2-233. The bond shall name the department as obligee and shall be delivered to it. The bond shall assure the safekeeping of the funds described and their delivery to the association after the issuance of a certificate of incorporation and after bonding of the officers of the corporation. In the event of failure to complete organization, the bond shall assure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses which shall be deducted from the expense fund. The incorporators, before a certificate of incorporation is issued, shall pay to the chairman in cash, labor, or services actually performed an aggregate amount of at least $500,000, including that part of the original subscription paid by the chairman, as subscriptions to the savings accounts of the proposed association.

History: En. Sec. 27, Ch. 5, L. 1983.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

32-2-233. Expense fund for mutual association. (1) In addition to their subscriptions to savings accounts, the incorporators shall create an expense fund of not less than one-half of the minimum amount of savings account subscriptions required to be paid in under this chapter. The expense fund shall be used to pay the expenses of organizing the association, and its operating expenses may be paid from the fund until such time as its net income is sufficient to pay such earnings as may be declared and paid or credited to its savings account holders from sources available for payment of earnings. Before a certificate of incorporation is issued, the incorporators shall deposit to the credit of the chairman of the incorporators the amount of the expense fund, in cash. The amounts contributed to the expense fund by the incorporators shall not constitute a liability of the association except as otherwise provided.

(2) Contributions made by the incorporators and others to the expense fund may be repaid pro rata from the net income of the association after provision for statutory reserves and declaration of earnings of not less than 2% on savings accounts. If the association is liquidated before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended shall be repaid to the contributors pro rata, after the payment of the expenses of liquidation, creditors, and withdrawal value of all savings accounts. The books of the association shall reflect the expense fund. The contributors to the expense fund shall be paid earnings on the amounts paid in by them at the times earnings are regularly distributed to savings account holders; and for this purpose, the contributions shall in all respects be considered as savings accounts of the association.

History: En. Sec. 28, Ch. 5, L. 1983.

32-2-234 through 32-2-240 reserved.

32-2-241. Organization of capital stock associations. The incorporators of a capital stock association shall appoint one of their number as chairman of the incorporators, and the chairman shall procure from a surety company or other surety acceptable to the department a surety bond in an amount at least equal to the sum of the amount of capital stock contributions and the additional amounts described in 32-2-242. The bond shall name the department as obligee and shall be delivered to it. The bond shall assure the safekeeping of the funds described and their delivery to the association after the issuance of the certificate of incorporation and the bonding of the officers. In the event of the failure to complete organization, the bond shall assure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses which shall be deducted from the paid-in surplus. Before a certificate of incorporation is issued, the subscribers shall pay to the chairman, in cash, labor, or services actually performed, the capital of such association. The capital shall be the sum of the par or initially stated value of all shares of voting capital stock. Each share of capital stock shall entitle the holder of the share to one vote. The minimum required capital is $500,000.

History: En. Sec. 30, Ch. 5, L. 1983.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Business corporations — shares, Title 35, ch. 1, part 6.

32-2-242. Capital stock association — surplus fund — verification statement. (1) In addition to the minimum capital required, the subscribers shall pay an amount equal to not less than 25% of the par or initially stated value of the stock subscribed, which shall be credited to paid-in surplus and may be used to offset losses. The minimum capital and surplus may be used for the reserves required by law and as may be permitted by the board of directors.

(2) Prior to the issuance of a certificate by the department, the incorporators of a proposed association shall file with the department a statement in the form and containing supporting data and proof as the department may require. The statement shall verify that the entire capital and paid-in surplus has been unconditionally paid in and that the funds representing the capital and paid-in surplus, less amounts of the paid-in surplus expended for land, building, supplies, fixtures, equipment, and organization, are on hand.

History: En. Sec. 31, Ch. 5, L. 1983.

32-2-243. Issuance of capital stock. (1) As of the date the corporate existence of a capital stock association begins, the association shall issue such capital stock as necessary to satisfy the minimum capital requirements of 32-2-241 and such additional capital stock as may be approved for issuance by the board of directors up to the amount authorized in the certificate of incorporation. Once the amount of stock authorized in the certificate of incorporation has been issued, no other shares may be issued except as otherwise authorized in this chapter. The capital stock of an association, when issued, shall constitute permanent capital and may not be retired or withdrawn, except as otherwise provided, until all liabilities of the association, including the withdrawal value of all savings accounts, have been satisfied in full and until outstanding capital certificates have been retired.

(2) An association may issue shares of common stock and preferred stock, with or without par value, and such common and preferred stock may be divided into classes and the classes into series.

History: En. Sec. 32, Ch. 5, L. 1983.

32-2-244. Restrictions on capital stock. (1) The consideration for the issuance of capital stock shall be paid in cash except for stock issued pursuant to:

(a) the incorporation of the association;

(b) an employee stock option plan;

(c) a plan of merger, consolidation, or conversion from a mutual to a stock association; or

(d) any other type of reorganization that has been approved by the department.

(2) The par value or stated value of stock issued pursuant to subsections (1)(a) through (1)(d) shall be maintained as the permanent capital of the association, and any additional amount paid in shall be credited to paid-in surplus.

(3) The aggregate par value or stated value of all outstanding shares of capital stock shall be the permanent capital of the association, and except as otherwise provided by this chapter, such capital stock may not be retired until final liquidation of the association. An association may not reduce the par or stated value of its outstanding capital stock without first obtaining the written approval of the department. The department shall withhold its approval if the reduction will cause the par or stated value of outstanding capital stock to be less than the minimum required by this chapter or will result in less than adequate net worth, as the department in its discretion may determine. An association may not retire any part of its capital stock without the approval of the department.

History: En. Sec. 33, Ch. 5, L. 1983.

32-2-245. Purchase of stock of deceased stockholder. An association may purchase its capital stock from the personal representative of a deceased stockholder upon the written approval of the department. Upon obtaining written approval, an association may contract with a living stockholder for a purchase of his stock upon his death. Any such purchase shall be for a price and upon such terms and conditions as may be agreed upon by the association and the stockholder or personal representative. The purchase of a deceased stockholder's stock may not reduce the net worth accounts of the association to an amount less than required by law or by any approved insurer of the association's savings accounts. An association agreeing with a stockholder to purchase his capital stock upon his death may purchase insurance on the life of the stockholder to fund or partially fund such purchase. Any stock purchased under this section may be resold by the association at a price and upon such terms and conditions as the board of directors may approve, or may be retired. If the stock is to be resold, the association shall file notice with the department disclosing the price, terms, and conditions of the proposed resale.

History: En. Sec. 34, Ch. 5, L. 1983.

32-2-246 through 32-2-250 reserved.

32-2-251. Mutual and capital stock conversions. (1) Any mutual association may convert to a capital stock association and any capital stock association may convert to a mutual association in accordance with the provisions of this section and 32-2-252 through 32-2-257.

(2) Any applicant seeking to convert its corporate form pursuant to this section and 32-2-252 through 32-2-257 shall first obtain approval of a plan of conversion by a resolution adopted by a two-thirds majority vote of the total number of directors authorized for the association.

History: En. Sec. 35, Ch. 5, L. 1983.

32-2-252. Department approval. (1) Upon approval of a plan of conversion by the board of directors, the plan and the resolution approving it shall be submitted to the department. The department shall approve the plan of conversion after appropriate examination, if it finds that:

(a) the plan of conversion is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and public are adequately protected; and

(c) the converting applicant has complied with the provisions of 32-2-251 through 32-2-257.

(2) If the department approves the plan of conversion, the approval, which shall be in writing, shall be sent to the home office of the applicant. To cause the applicant to conform with the requirements of this chapter, the approval may prescribe terms and conditions, to be fulfilled either before or after the conversion.

(3) If the department disapproves the plan of conversion, its objections shall be sent in writing to the home office of the applicant. The applicant shall be afforded an opportunity to amend and resubmit the plan within a reasonable time as prescribed by the department. If the department disapproves the resubmitted plan, written notice of the final disapproval shall be sent by certified mail to the applicant's home office.

History: En. Sec. 36, Ch. 5, L. 1983.

32-2-253. Submission to members or stockholders. (1) If the department has approved a plan of conversion pursuant to 32-2-252, the plan shall be submitted for adoption to the members or stockholders of the association for a vote at a meeting called for that purpose. The plan must be approved by:

(a) members of a mutual association representing two-thirds of the withdrawable deposits, present in person or by proxy at the meeting; or

(b) stockholders of a capital stock association holding two-thirds of the capital stock, represented in person or by proxy at the meeting.

(2) If the plan is approved, action shall be taken to amend the articles of incorporation and bylaws as necessary, elect directors and officers, and take any other action as is required or appropriate for the type of association into which the applicant will be converted. A certified report of the proceedings shall be filed promptly with the department.

History: En. Sec. 37, Ch. 5, L. 1983.

32-2-254. Conversion of mutual to capital stock association — mandatory plan requirements. The following requirements are mandatory in any plan of conversion from the mutual form to a capital stock form of organization:

(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure

to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

(2) The plan shall specify the aggregate dollar amount of voting capital stock and the total number of shares to be issued to accomplish the conversion. The distribution of the stock shall be in accordance with subsection (3).

(3) All voting capital stock issued by the association to accomplish a conversion shall be subscribed and fully paid for in cash, labor, or services actually performed in the conversion process and may not be eligible, either directly or indirectly, as security for a loan or other credit advance to facilitate its own purchase. Each account holder must have the right for a period of 60 days to purchase a proportionate share of the stock at a price equal to the initial stated value thereof. Any stock remaining unsubscribed shall, during the succeeding 60-day period, be offered for sale to those savings account holders of record who have purchased their proportionate share during the initial period. Any stock remaining unsubscribed may be offered for sale to others or transferred to others in consideration for labor or services actually performed in the conversion process.

(4) The record date for determining savings account holders' rights to distribution under subsection (3) shall be set by the converting association's board of directors but may not be less than 120 days prior to the date of approval of the conversion plan by the directors.

(5) The conversion plan shall make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts are to be disposed of or retained.

(6) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of 32-2-251 through 32-2-257.

History: En. Sec. 38, Ch. 5, L. 1983.

32-2-255. Conversion of capital stock to mutual association — mandatory plan requirements. The following requirements are mandatory in any plan of conversion from the capital stock form to a mutual form of association:

(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

(2) The conversion plan shall specify how and in what amount the return of capital to each class of stockholder in the form of an exchange of stock for savings accounts shall be effectuated.

(3) The plan shall provide for the allocation of voting rights to the holders of savings accounts and the manner in which such rights may be exercised.

(4) The plan shall make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts shall be disposed of or retained.

(5) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of 32-2-251 through 32-2-257.

History: **En. Sec. 39, Ch. 5, L. 1983.**

32-2-256. Issuance of certificate — continuance of entity. (1) If the department determines that a conversion proceeding has been completed in accordance with the requirements of 32-2-251 through 32-2-257, it shall issue to the applicant a certificate of conversion. The conversion does not become effective until the issuance of the certificate.

(2) Upon the issuance to the applicant of a certificate of conversion, the corporate existence of the converting applicant does not terminate but shall be treated as a continuation of the entity so converted. All property of the converted applicant, of whatever kind, and any benefit pertaining to it vest in the converted applicant without any further action, to the same extent as possessed by the converting applicant.

History: **En. Sec. 40, Ch. 5, L. 1983.**

32-2-257. Continuance of rights and obligations. A converted applicant, upon issuance of the certificate of conversion, continues to have and succeeds to all the rights, obligations, and relations of the converting applicant. All pending actions and other judicial proceedings to which the converting applicant was a party may not be abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made, and the converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree that might have been rendered for or against the converted applicant prior to the conversion may be rendered for or against it after the conversion.

History: **En. Sec. 41, Ch. 5, L. 1983.**

32-2-258 through 32-2-260 reserved.

32-2-261. Foreign associations — requirements. (1) An association, as defined in 32-2-103, organized under the laws of any other state, of the United States, or of any foreign government shall, before doing business in this state, file with the secretary of state and the department a duly authenticated copy of their charter, articles of incorporation, or articles of agreement and also a statement, verified by oath of the president and secretary of the corporation or managing officials if other than a corporation and duly verified, showing:

(a) the name of the association and the location of its principal office or place of business outside this state and the location of the place of business or principal office in this state;

(b) the names and residences of the officers, trustees, or directors;

(c) the amount of capital stock, if any, and savings liability;

(d) the amount of capital invested in the state of Montana.

(2) The association shall also file, at the same time and in the same offices, a certificate, signed by its president, vice-president, or other acting head and by its secretary, if there is one, certifying that the association has consented to all the license laws and other laws of this state relative to foreign associations and has consented to be sued in the courts of this state upon all causes of action arising against it in this state and that service of process may be made upon a citizen of

this state, whose name and place of residence shall be designated in the certificate. Service of process on that agent is valid service on the association.

History: En. Sec. 29, Ch. 57, L. 1927; re-en. Sec. 6355.30, R.C.M. 1935; amd. Sec. 80, Ch. 431, L. 1975; R.C.M. 1947, 7-131; amd. Sec. 10, Ch. 5, L. 1983; MCA 1981, 32-2-221; redes. 32-2-261 by Code Commissioner, 1983.

Cross-References

Laws of other states — reciprocity, 32-2-105.

Business corporations — foreign corporations, Title 35, ch. 1, part 10.

32-2-262. Consent of agent. The written consent of the person so designated to act as agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof or of a consent executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the officer executing it.

History: En. Sec. 30, Ch. 57, L. 1927; re-en. Sec. 6355.31, R.C.M. 1935; R.C.M. 1947, 7-132; Sec. 32-2-222, MCA 1981; redes. 32-2-262 by Code Commissioner, 1983.

Cross-References

Creation of agency, Title 28, ch. 10, part 2.

32-2-263. Contracts void if made before compliance with law. If any such foreign association shall attempt or commence to do business in this state without having first filed said statement, certificate, and consent required by this chapter or without complying with any or all of the laws of Montana relating to the payment of fees or licenses, no contract made by them or any agent or agents thereof during said time shall be enforceable by them until the foregoing provisions have been complied with.

History: En. Sec. 31, Ch. 57, L. 1927; re-en. Sec. 6355.32, R.C.M. 1935; R.C.M. 1947, 7-133; Sec. 32-2-223, MCA 1981; redes. 32-2-263 by Code Commissioner, 1983.

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

32-2-264. Shares of stock and savings accounts subject to attachment. The stock or savings accounts of such foreign associations doing business in this state shall be subject to attachment in the same manner as now provided by law in the case of domestic associations.

History: En. Sec. 32, Ch. 57, L. 1927; re-en. Sec. 6355.33, R.C.M. 1935; R.C.M. 1947, 7-134; amd. Sec. 11, Ch. 5, L. 1983; MCA 1981, 32-2-224; redes. 32-2-264 by Code Commissioner, 1983.

Cross-References

Prejudgment attachment — corporate stock, 27-18-410.

32-2-265 through 32-2-270 reserved.

32-2-271. Consolidation and transfer — branching prohibited. (1) Only building and loan associations organized and chartered under the laws of the state of Montana may, with the approval of the department, consolidate and become incorporated in one body, with or without any dissolution or division of the funds or property of any of them. Any association may transfer its engagements, funds, and property to any other association upon terms agreed upon by a majority vote of the respective board of directors and ratified by a two-thirds vote of the shares or members owning at least two-thirds of the withdrawable deposits in the association, present and voting in person or by proxy at a special meeting or meetings of the stockholders or members of the respective associations convened for that purpose, upon notice given as provided by law; the notice to state the object of the meeting. A transfer may not prejudice any right of any creditor of the association.

(2) Branching by merger or branching otherwise between a building and loan association organized and chartered under the laws of Montana and a building and loan association organized and chartered under the laws of any other state is prohibited. Branching de novo in Montana by a foreign-chartered building and loan association is prohibited.

(3) Insofar as this section limits or reduces the rights, powers, or privileges of building and loan associations previously granted by law, it shall apply only to proposed consolidations or mergers of associations which are initiated by action taken by their board of directors and shareholders subsequent to April 14, 1977.

History: (1), (2)En. as Subd. 22, 7-113, by Sec. 1, Ch. 168, L. 1931; repealed by Sec. 4, Ch. 11, L. 1933; re-en. Sec. 1, Ch. 11, L. 1933; Sec. 7-113(22), R.C.M. 1947; amd. and redes. 7-113.2 by Sec. 73, Ch. 431, L. 1975; amd. Sec. 1, Ch. 363, L. 1977; Sec. 7-113.2, R.C.M. 1947; (3)En. 7-113.3 by Sec. 2, Ch. 363, L. 1977; Sec. 7-113.3, R.C.M. 1947; R.C.M. 1947, 7-113.2, 7-113.3; amd. Sec. 12, Ch. 5, L. 1983; MCA 1981, 32-2-231; redes. 32-2-271 by Code Commissioner, 1983.

Cross-References

National bank powers extended to state banks, 32-1-362.

Consolidation or merger of banks, 32-1-371.

Branch bank — detached facilities, 32-1-372.

Laws of other states — reciprocity, 32-2-105.

Credit unions — merger, 32-3-322.

Part 3

Department of Commerce Responsibility

Part Cross-References

Special examination of association by Department, 32-1-215.

32-2-301. Examinations by department. The department shall examine all building and loan associations doing business in this state at least once a year. Also, when the holders of 10% of the subscribed stock or members holding 10% of the withdrawable deposits of an association file a written application with the department requesting it to make a special examination of an association, it shall make the examination immediately. The expense of the examiner making the examination shall be paid by the association examined, and the examiner's finding shall be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this chapter.

History: En. Sec. 23, Ch. 57, L. 1927; re-en. Sec. 6355.24, R.C.M. 1935; amd. Sec. 1, Ch. 81, L. 1955; amd. Sec. 77, Ch. 431, L. 1975; R.C.M. 1947, 7-125; amd. Sec. 13, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — examination and supervision by Department, 32-1-211.

Special examination of association by Department, 32-1-215.

32-2-302. Reports and accounts prescribed by department. The department may prescribe and supervise a uniform system of reports and accounting for all associations. The department shall have access to and may compel the production of all books, papers, securities, and moneys of any association under examination. It may administer oaths to and examine the officers and agents of the association and its affairs.

History: En. Sec. 24, Ch. 57, L. 1927; re-en. Sec. 6355.25, R.C.M. 1935; amd. Sec. 78, Ch. 431, L. 1975; R.C.M. 1947, 7-126.

Cross-References

Oaths, Title 1, ch. 6.

Production of documents for inspection, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Banks and trust companies — reports to Department, 32-1-231.

32-2-303. Reports of condition — contents — publication. When requested to do so by the department, a building and loan association shall make to the department a report of condition, according to the form which may be prescribed by the department. The report shall be verified by the oath or affirmation of the president, vice-president, or secretary of the association and attested by the signature of at least two of the directors. The report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day specified and shall be transmitted to the department within 5 days after the receipt of a request or requisition for it from the department and in a form which may be required by the department. It shall be published as soon as possible in a newspaper in the place where the association is established or, if there is no newspaper published in the place, then in one published nearest thereto in the same county, at the expense of the association. Proof of publication shall be furnished at the times and in the manner which may be required by the department.

History: En. Sec. 25, Ch. 57, L. 1927; re-en. Sec. 6355.26, R.C.M. 1935; amd. Sec. 79, Ch. 431, L. 1975; R.C.M. 1947, 7-127.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Banks and trust companies — reports to Department, 32-1-231.

Banks and trust companies — special reports to Department, 32-1-233.

32-2-304. Removal of directors, officers, or employees. Any director, officer, or employee of any association found by the department after examination to be dishonest shall be removed from office by the board of directors of such association on the written order of the department, and if the directors neglect or refuse to remove such director, officer, or employee, in event any losses accrue to such association thereafter by reason of the dishonesty of such director, officer, or employee, such written order of the department shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them or any of them for recovery of such losses.

History: En. Sec. 26, Ch. 57, L. 1927; re-en. Sec. 6355.27, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-128.

Cross-References

Negligence, 27-1-701, 27-1-702.

Banks and trust companies — removal of directors, officers, or employees, 32-1-468.

Removal of directors or officers of financial institutions, Title 32, ch. 1, part 9.

Removal of directors, 32-2-207.

32-2-305. Department to approve contracts paying income to person other than association — penalty for not securing. No fiscal agency or promotion contract or any other contract or arrangement, whereby the membership fee or any other income properly payable to the association, or any part thereof, is payable to an agent or other contracting party or otherwise than to the association or whereby any part of the business of the association or the management or conduct of its affairs or the expense of them is contracted to another, may be entered into or allowed until it has been submitted to the department and by it approved in writing. That contract may not be extended without the department's approval. The contract or the extension of the contract not first approved is void. A person operating under the contract or extension not first approved or taking or receiving income properly payable to the association without approval is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 154, L. 1931; re-en. Sec. 6355.8, R.C.M. 1935; amd. Sec. 71, Ch. 431, L. 1975; R.C.M. 1947, 7-108.

Cross-References

Contracts generally, Title 28, ch. 2, 3.

Contracts void if made before compliance with law, 32-2-263.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty specified, 46-18-212.

32-2-306. Department report. The department shall preserve in permanent form a full record of its proceedings, including a concise statement of each association examined, and it shall annually make a report to the governor of the general conduct and condition of the building and loan associations doing business in this state, with those suggestions as it considers expedient. The report shall also include the information contained in the statement required of the association, arranged in tabulated form.

History: En. Sec. 36, Ch. 57, L. 1927; re-en. Sec. 6355.37, R.C.M. 1935; amd. Sec. 82, Ch. 431, L. 1975; R.C.M. 1947, 7-138.

Cross-References

Banks and trust companies — examination and supervision by Department, 32-1-211.

Annual statements, 32-2-412.

32-2-307. Reports and examinations by department confidential. (1) An employee or agent of the department who fails to keep secret the facts and information obtained in the course of an examination or by reason of his official position, except when the public duty of that officer requires him to report upon or take official action regarding the affairs of the association so examined, or willfully makes a false official report as to the conditions of the association shall be removed from office and shall be fined not more than $500 or imprisoned in the penitentiary not less than 2 years or more than 5 years, or both.

(2) Nothing in this section prevents the proper exchange of information relating to building and loan associations and their business with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of an individual, association, or company be disclosed.

History: En. Sec. 45, Ch. 57, L. 1927; amd. Sec. 2, Ch. 11, L. 1933; re-en. Sec. 6355.46, R.C.M. 1935; amd. Sec. 84, Ch. 431, L. 1975; R.C.M. 1947, 7-147(part).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Banks and trust companies — confidentiality of reports — penalties, 32-1-234.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

Tampering with public records or information, 45-7-208.

32-2-308. Membership in federal home loan bank. (1) An association, the officers or agents thereof, and the department may do anything necessary to enable a building and loan association within this state to become a member of the federal home loan bank of this or any adjoining district so far as may be compatible with the constitution of this state and the laws of the United States.

(2) The department, on request of any federal home loan bank, shall furnish that bank any information it may have relative to the finances, manner of business, methods of bookkeeping, and any other information relating to an association which is a member of, seeking to become a member of, a borrower from, or seeking to become a borrower from a federal home loan bank.

History: En. Sec. 45, Ch. 57, L. 1927; amd. Sec. 2, Ch. 11, L. 1933; re-en. Sec. 6355.46, R.C.M. 1935; amd. Sec. 84, Ch. 431, L. 1975; R.C.M. 1947, 7-147(part).

Cross-References

Change from state to national bank, 32-1-361.

Banks allowed to join federal reserve bank, 32-1-373.

32-2-309. Insolvency or impairment of association — powers of department. (1) When it appears to the department that the affairs of a building and loan association are in an unsound condition or that it is conducting its business in an unsafe or unlawful manner, the department may take possession of all books, records, and assets of every description of the association and retain possession of them pending the further proceedings specified in this section.

(2) If the board of directors, secretary, or person in charge of the association refuses to permit the department to take possession, the department shall communicate that fact to the attorney general. The attorney general shall at once institute the proceedings necessary to place the department in immediate possession of the property of the association.

(3) Upon taking possession of the effects of the association, the department shall prepare a full and true statement of the affairs and condition of the association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues, and claims belonging to it and pay the immediate and reasonable expenses of the department's trust.

(4) When the condition of the association has been fully ascertained and it appears that the affairs of the association are in fact in an unsound condition, the department shall at once notify, in writing, the board of directors of the association of its decision, giving them 20 days in which to restore the affairs of the association to sound condition.

(5) Meanwhile, the department shall remain in charge of the books, records, and assets of every description of the association, shall attend or be represented at all directors and stockholders or members meetings held, and shall suggest those steps it considers necessary to restore the association to a sound condition.

(6) If the association is not restored to a sound condition within 20 days, the department shall report the facts to the attorney general. The attorney general shall institute proceedings in the district court of the county in which the association has its principal place of business for the appointment of the department as receiver.

(7) As receiver, the department may collect all moneys due the association and may do those other acts which are necessary to conserve its assets and business, and it shall liquidate the association's affairs. The department may, except as otherwise limited by the terms of this chapter, do any acts necessary or, in its discretion, desirable for the protection of the property and assets of the association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors or for the resumption of business of the association where that is practicable or desirable. The department may institute in its own name or in the name of the association those legal proceedings it considers expedient for those purposes.

(8) By applying to the district court of the county in which the association is located, or to the judge thereof in chambers, the department may, upon sufficient showing of cause, obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell any of the assets. The sale may be made to stockholders, members, officers, directors, or others interested in the association,

on consent of the court. On the proceedings the association shall be made a party by notice issued on order of the court or judge, in place of summons but served in like manner. The hearing of the application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the association has had 5 days' notice of the application.

History: En. Sec. 48, Ch. 57, L. 1927; re-en. Sec. 6355.49, R.C.M. 1935; amd. Sec. 86, Ch. 431, L. 1975; R.C.M. 1947, 7-150; amd. Sec. 14, Ch. 5, L. 1983.

Cross-References

Receivers, Title 27, ch. 20.

Insolvency defined, 30-1-201, 31-2-202.

Bank placed in Department's possession, 32-1-511.

Insolvent banks — power of Department, 32-1-562.

Voluntary liquidation and settlement, 32-2-431.

Reorganization of associations under liquidation, 32-2-432.

Part 4

Operation and Regulation

Part Cross-References

Deposits of public funds in building and loan associations, Title 17, ch. 6, part 1.

Consumer credit transactions — interest rates — rights and remedies of parties, Title 31.

32-2-401. Powers and duties of building and loan associations. A building and loan association may:

(1) have continual succession by its corporate name;

(2) sue and be sued in any court;

(3) make and use a common seal and alter it at pleasure;

(4) appoint those officers or agents the business of the corporation requires and pay them suitable compensation;

(5) enter into obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation;

(6) issue stock to stockholders and savings certificates to members on the terms and conditions the articles of incorporation and bylaws provide;

(7) assess and collect from members interest on loans at the times and in the amount provided for in the articles of incorporation and bylaws;

(8) permit members to withdraw all or part of their savings at the times and upon the terms as the articles of incorporation and bylaws may provide;

(9) cancel savings certificates upon which all credits have been withdrawn or upon which loans have been canceled or savings upon which no payments have been made for a period of 6 months, by returning to the members all credits, if any, and reissue the certificates as new savings certificates;

(10) issue savings certificates to minors and permit them to be withdrawn as other savings certificates. The receipt by the minor is a valid acquittance if his rights have been fully secured to him.

(11) acquire, hold, encumber, and convey that real estate and personal property necessary for the transaction of its business or necessary to enforce or protect its securities;

(12) borrow money, only when necessary and not exceeding 20% of its assets, except when borrowing from the federal home loan bank as provided in 32-2-405, and issue its promissory note for the loan;

(13) make loans to members on the security of the savings accounts of the association and also on their notes secured by first mortgages on improved real estate, including suburban homes or farm lands but not on mining property, for

not to exceed 75% of the actual value of the real estate and upon the terms and conditions which may be provided in the articles of incorporation and bylaws;

(14) cancel those loans and release the securities on those terms the board of directors may provide;

(15) invest the money of the association in accordance with 32-2-406;

(16) loan money to other building and loan associations;

(17) make distribution of all interest and dividends earned after payment of expenses and setting aside a sum for the contingent funds as provided in this chapter;

(18) amend its articles of incorporation by changing the name, place of business, the number of directors, and increase or decrease the capital stock, and provide for its own continual succession by a majority vote of its directors. However, those amendments are of no effect until approved by the department.

(19) dissolve the corporation in accordance with the provisions of this chapter;

(20) provide, by articles of incorporation and bylaws adopted or amended by its board of directors, for the proper exercise of the powers granted in this section and the conduct and management of its affairs;

(21) exercise those other powers which are necessary and proper to enable the corporation to carry out the purpose of its organization.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part); amd. Sec. 15, Ch. 5, L. 1983; amd. Sec. 1, Ch. 243, L. 1989.

Cross-References

Investments in certain federally guaranteed bonds authorized, 7-15-4505.

Commercial bank defined, 32-1-105.

Savings bank defined, 32-1-106.

Trust company defined, 32-1-107.

Building and loan associations — purpose — definitions, 32-2-101.

Bylaws, 32-2-204.

Capital stock — restrictions, 32-2-244.

Minor not to disaffirm certain obligations, 41-1-306.

32-2-402. Limit on interest and penalties. (1) Interest not exceeding the lawful contract rate may be charged and collected on delinquent stock payments when those unpaid payments are credited with dividends. The interest shall in no event be at a rate exceeding the rate percent of the dividend declared on the same unpaid stock payments.

(2) An association may not charge or collect from a stockholder, member, or borrower any fines, premiums, or penalties of any kind; except that a late payment penalty not to exceed $5 may be charged for payments more than 15 days late.

(3) An officer, agent, or employee of an association collecting or attempting to collect a penalty, fine, or premium of any kind, except the late payment penalty, or interest at a rate higher than provided in the note or other evidence of debt or in this chapter is guilty of a misdemeanor.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part); amd. Sec. 5, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983.

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Regulated lender defined, 31-1-111.

Interest rate limitation exemption — regulated lenders, 31-1-112.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty specified, 46-18-212.

32-2-403. Statement of interest rates — canceling loans. (1) Where the promissory note or other written evidence of the loan made by a building and loan association requires the payment of the loan or total aggregate sum of principal and interest in periodic installments, the promissory note or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment. When the note or other evidence of debt does not require the payment of the loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest charged the borrower.

(2) A borrower may have his loan canceled by paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in, and the dividends credited.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Regulated lender defined, 31-1-111.

Interest rate limitation exemption — regulated lenders, 31-1-112.

32-2-404. Savings account withdrawal. (1) No charge or fee, except as provided in this section, may be made against a member who withdraws his savings, after having given 30 days' notice of the withdrawal. No fine of any description may be made upon the value of that savings account because of the withdrawal. A member who withdraws his savings or whose savings account is matured is entitled to receive all sums paid in and all interest declared, less interest, if any, as provided in 32-2-402, less a reasonable membership fee not exceeding 2% of the amount of his deposit, and less a pro rata share of all losses, if any, which have occurred. No other fine or assessments may be made against the savings.

(2) Applications for withdrawal shall be registered on the books of the association in the order received, and one-half of all cash collections not required to meet outstanding contracts must be used for the payment of the matured savings and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but no member may receive more than $100 in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money, and all fixed charges.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part); amd. Sec. 16, Ch. 5, L. 1983.

Cross-References

Credit unions — members who leave field, 32-3-308.

32-2-405. Pledging association assets. (1) The assets and securities of an association may not be pledged to secure its borrowed money or for any other purpose without the consent of the department. However, if the department determines that it is advisable to pledge assets in order that funds may be secured, it may authorize the pledging. The margin of security pledged may not exceed 25%

of the funds so borrowed except when funds are borrowed from the federal home loan bank.

(2) An association may borrow money from the federal home loan bank upon the terms required by the federal home loan bank, may execute the promissory note of the corporation for the loan, and may pledge any of the assets of the corporation to secure the repayment of the loan, with interest, in accordance with the Federal Home Loan Bank Act and the rules adopted under it.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

Cross-References

Security for deposit of public funds, 17-6-103.

Banks and trust companies — extent assets may be pledged, 32-1-411.

Membership in federal home loan bank, 32-2-308.

32-2-406. Investments. (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal deposit insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) improved real estate that has been sold under contract, including suburban homes or farm lands but not including mining property. However, the total amount remaining invested in real estate, excluding real estate otherwise acquired, may not exceed 15% of its assets. The amount invested in real estate may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property purchased, whichever is the lesser.

(e) other bonds, securities, and investments, not to exceed 10% of the association assets.

(2) Not over 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it is lawful for a building and loan association or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations.

History: (1), (2)En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; Sec. 7-113, R.C.M. 1947; (3)En. Sec. 1, Ch. 5, Ex. L. 1933; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1935; amd. Sec. 1, Ch. 24, L. 1937; Sec. 35-142, R.C.M. 1947; R.C.M. 1947, 7-113(part), 35-142(part); amd. Sec. 6, Ch. 36, L. 1979; amd. Sec. 1, Ch. 154, L. 1979; amd. Sec. 5, Ch. 137, L. 1989; amd. Sec. 2, Ch. 243, L. 1989; amd. Sec. 54, Ch. 10, L. 1993.

Cross-References

Coal severance tax bonds — legal investments, 17-5-718.

Highway revenue bonds — legal investments, 17-5-930.

Economic development bonds as legal investments, 17-5-1525.

Municipal finance consolidation bonds as legal investments, 17-5-1628.

Investments of financial institutions, 32-1-424.

Credit unions — investment of funds, 32-3-701.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

32-2-407. Real estate loans limited by congress. Building and loan associations and savings and loan associations, organized and operating under the laws of the state of Montana, may, in addition to any loan or investment permitted prior to July 1, 1963, make any real estate loan upon terms and conditions set by the department but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state.

History: En. Sec. 1, Ch. 263, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-113.1; amd. Sec. 2, Ch. 154, L. 1979.

Cross-References

Authority of state banks to make real estate loans, 32-1-430.

National Housing Act loans, Title 32, ch. 2, part 5.

32-2-408. Bonds of officers, agents, and employees. The board of directors of every building and loan association shall require that all officers, agents, and employees of building and loan associations whose duties include the handling of moneys, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers be bonded. The board of directors shall by an order entered upon the minute books of the board designate all the officers, agents, and employees to be so bonded and the amount of bonds to be given by each. The action as to the personnel and amount and the surety company or sureties shall be subject to approval by the department. The bonds shall be in a form which shall be provided and approved by the department, and the bonds shall be approved by the president of the building and loan association and his action reported to the board of directors. All bonds required by this section shall be kept in the custody of the building and loan association subject to inspection by the department. As far as possible, a bond may not be placed in the custody of the officer, agent, or employee for whom it is given.

History: En. Sec. 16, Ch. 57, L. 1927; amd. Sec. 1, Ch. 5, L. 1933; re-en. Sec. 6355.17, R.C.M. 1935; amd. Sec. 74, Ch. 431, L. 1975; R.C.M. 1947, 7-118.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Banks and trust companies — bonding of employees, 32-1-461.

32-2-409. Employment of agents — licenses and revocation thereof. (1) It is unlawful for a building and loan association doing business in this state to employ an agent for the purpose of soliciting loans or the sale of stock in that association unless he is first licensed by the department. An agent representing an association, foreign or domestic, doing business in this state may not solicit loans or the sale of stock of any association unless he is first licensed by the department.

(2) A license may not be issued to an applicant for an agent's license until the applicant has first filed with the department a written request from the building and loan association desiring to employ him as agent and has filed an application upon a form prescribed and furnished by the department. The application must show the applicant's name, business and residence address, community or district in which he wishes to act as agent, the name of the company to be represented, his occupation for the last 12 months, and other information the department may require. If the department is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans or the sale of stock, it shall issue the license. The department, upon 10 days' notice to an agent and after a hearing, may revoke the license of an agent upon the following grounds:

(a) misrepresentation;

(b) conviction in any court for violation of the criminal statutes;

(c) evidence sufficient to convince the department that the agent is not a fit and proper person to sell building and loan association stock.

(3) The department shall revoke the license of an agent upon the request of the association employing the agent.

(4) Each license provided for in this section expires on December 31 of each year, and for issuance or renewal the department shall require a fee of $2.

History: En. Sec. 17, Ch. 57, L. 1927; re-en. Sec. 6355.18, R.C.M. 1935; amd. Sec. 75, Ch. 431, L. 1975; R.C.M. 1947, 7-119.

Cross-References

Agency, Title 28, ch. 10.

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Reports and accounts prescribed by Department, 32-2-302.

32-2-410. Fund for contingent losses. The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or serial associations at least 5% of the net earnings shall be set aside each year for such fund until it reaches at least 5% of the book value of the savings deposits. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below 5% of the savings deposits, it shall be replenished by annual appropriations of at least 5% of the earnings, as hereinbefore provided, until it again reaches said amount.

History: En. Sec. 18, Ch. 57, L. 1927; re-en. Sec. 6355.19, R.C.M. 1935; R.C.M. 1947, 7-120; amd. Sec. 17, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — reserve requirements, 32-1-455.

32-2-411. Payment of expenses — losses — dividends — reserve fund. (1) All expenses of any such association shall be paid out of the earnings only, in such manner as may be provided in its bylaws. The charges incident to a loan, if paid by the borrower, shall be deemed a part of the current expenses.

(2) Associations so desiring may annually or semiannually credit to a reserve fund the net earnings remaining after the payment of expenses and dividends and after crediting the contingent fund with the amount required by law, provided the amount so credited to the reserve fund in any fiscal year shall not exceed 1% of the book value of the outstanding stock. The reserve fund shall not exceed 5% of the

book value of the outstanding stock. The reserve fund so created may be used for the payment of dividends, provided:

(a) the amount of the reserve fund so used shall not exceed 1% of the book value of the outstanding stock in any year; and

(b) that should the contingent fund of an association become exhausted, then no part of the reserve fund may be used for the payment of dividends and in the discretion of such association such reserve fund or the part thereof it shall deem necessary shall be credited to the contingent fund.

(3) Dividends shall be declared semiannually from the net earnings of the association and shall be paid or credited to all stockholders at such time and in such manner as provided in the constitution and bylaws.

(4) Losses in excess of the contingent fund and reserve fund shall be assessed pro rata in the same proportion and manner on all stockholders, to the extent only of their stock credits in such association.

History: En. Sec. 19, Ch. 57, L. 1927; amd. Sec. 1, Ch. 167, L. 1931; re-en. Sec. 6355.20, R.C.M. 1935; R.C.M. 1947, 7-121.

Cross-References

Banks and trust companies — dividends, surplus, losses, and bad debts, 32-1-452.

Banks and trust companies — reserve requirements, 32-1-455.

Shares of stock and savings accounts subject to attachment, 32-2-264.

32-2-412. Annual statements. Every building and loan association doing business in this state shall annually, on June 30 or within 20 days thereafter, make a full detailed report, in writing, of the affairs and business of the association for the fiscal year ending on said June 30, showing its financial condition at the end of said year.

History: En. Sec. 21, Ch. 57, L. 1927; re-en. Sec. 6355.22, R.C.M. 1935; R.C.M. 1947, 7-123.

Cross-References

Department report, 32-2-306.

32-2-413. Form of statement — where filed. The statement shall be in such form and contain such information as may be prescribed by the department. It shall be sworn to by the secretary of such association and its correctness attested by at least three directors or an auditing committee appointed by the board of directors. The original shall be filed with the department within 20 days after the close of the fiscal year, and such an abstract thereof as the department may require shall be posted for 60 days in the office or meeting place of such association and also published once in the newspaper published in the town in which the association is located or, if no newspaper is published in the town in which association is located, then in one published nearest thereto in the same county, and such proof of publication shall be furnished at such times and in such manner as may be required by the department.

History: En. Sec. 22, Ch. 57, L. 1927; re-en. Sec. 6355.23, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-124.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Reports and accounts prescribed by Department, 32-2-302.

Department report, 32-2-306.

32-2-414. Interest or commissions not included in profits. Interest or commissions unpaid, although due or accrued, on debts owing to any building and loan association shall not be included in calculation of its profits.

History: En. Sec. 40, Ch. 57, L. 1927; re-en. Sec. 6355.41, R.C.M. 1935; R.C.M. 1947, 7-142.

Cross-References

Reports of condition — contents — publication, 32-2-303.

32-2-415. Limitation on loans. The total liabilities of any person, partnership, or corporation to any association for money borrowed, however secured, including in the liabilities of a partnership, the liabilities of the several members thereof, shall at no time exceed 20% of the amount of the assets of such association.

History: En. Sec. 41, Ch. 57, L. 1927; re-en. Sec. 6355.42, R.C.M. 1935; R.C.M. 1947, 7-143.

Cross-References

Banks and trust companies — limitations on loans, 32-1-432.

Credit unions — loan limit, 32-3-603.

32-2-416. Joint ownership. Any building and loan association may issue savings certificates and shares to or in the name of two or more persons, whether husband and wife or otherwise; withdrawal by any one of such persons and the receipt or acquittance of any one of such persons shall be valid and sufficient release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder or certificate holder.

History: En. Sec. 42, Ch. 57, L. 1927; re-en. Sec. 6355.43, R.C.M. 1935; R.C.M. 1947, 7-144; amd. Sec. 18, Ch. 5, L. 1983.

Cross-References

Credit unions — joint ownership of shares, 32-3-505.

Joint interest defined, 70-1-307.

32-2-417. Trust — payment. Whenever any shares of stock shall be purchased or savings deposits made in any building and loan association by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said shares were purchased or savings deposits made.

History: En. Sec. 43, Ch. 57, L. 1927; re-en. Sec. 6355.44, R.C.M. 1935; R.C.M. 1947, 7-145; amd. Sec. 19, Ch. 5, L. 1983.

Cross-References

Credit unions — trust accounts, 32-3-506.

Trust Code, Title 72, ch. 33 through 36.

32-2-418. Savings held by minor. Whenever any savings accounts in any building and loan association shall be purchased by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the savings accounts shall have been purchased, and the receipt of such minor shall be sufficient release or discharge for such savings accounts to the association.

History: En. Sec. 44, Ch. 57, L. 1927; re-en. Sed. 6355.45, R.C.M. 1935; R.C.M. 1947, 7-146; amd. Sec. 20, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — deposit in name of minor, 32-1-444.

Credit unions — minor's accounts, 32-3-504.

Parental control over property of child, 40-6-232.

Enforcement of minor's rights, 41-1-202.

Minor not to disaffirm certain obligations, 41-1-306.

32-2-419. Repealed. Sec. 3, Ch. 243, L. 1989.

History: En. Sec. 46, Ch. 57, L. 1927; re-en. Sec. 6355.47, R.C.M. 1935; R.C.M. 1947, 7-148.

32-2-420. Associations may make loans guaranteed under Servicemen's Readjustment Act of 1944. (1) All building and loan associations organized under the laws of the state of Montana are hereby empowered to make any loan which is guaranteed in whole or in part by the United States or any federal agency or federal instrumentality thereof under the Servicemen's Readjustment Act of 1944 or any amendment thereto, enacted by the congress of the United States, provided such loan shall be secured by either a first or second mortgage on real estate.

(2) Insofar as the provisions of this section are inconsistent with the provisions of any other law governing building and loan associations, the provisions of this section shall control.

History: En. Secs. 1, 2, Ch. 35, L. 1945; R.C.M. 1947, 7-158, 7-159.

32-2-421 through 32-2-430 reserved.

32-2-431. Voluntary liquidation and settlement. (1) With the consent of the department, an association organized under the laws of and doing business in this state, may, if the members or stockholders consider it advisable, go into liquidation. For the purpose of so doing it may, at any regular or called meeting of the members or stockholders, adopt a resolution declaring that the association intends to go into liquidation and discontinue business as a building and loan association. A copy of the resolution, duly certified by the president and secretary of the association, under the seal thereof, shall be transmitted to the department within 10 days after its passage. The department shall then issue its certificate reciting that the resolution has been filed in its office and that the association is in liquidation.

(2) After the filing of the notice, it is unlawful for the association to issue stock or to loan or advance its money to members, shareholders, or any other person.

(3) All of the income and receipts of the association in excess of the actual expense of managing it shall be applied to pay off first the indebtedness and the savings accounts in the association upon which no loans have been made, the same to be paid pro rata, then to pay off the capital stock in the association, pro rata.

(4) The board of directors of the association in liquidation may adopt those rules and make those orders which are just and equitable for the sale and disposition of all property held by the association and for the division of the assets of the association.

(5) The association in liquidation may be examined by and shall be under the supervision of the department.

History: En. Sec. 47, Ch. 57, L. 1927; re-en. Sec. 6355.48, R.C.M. 1935; amd. Sec. 85, Ch. 431, L. 1975; R.C.M. 1947, 7-149; amd. Sec. 21, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — dissolution, closing, and liquidation, Title 32, ch. 1, part 5.

Meetings of stockholders and directors, 32-2-208.

Examinations by Department, 32-2-301.

Business corporations — dissolution and liquidation, Title 35, ch. 1, part 9.

32-2-432. Reorganization of associations under liquidation. Any association under voluntary liquidation as provided in 32-2-431 or which may be under the possession of the department as specified in 32-2-309 may resume business as an active building and loan association in the following manner:

(1) The directors of such building and loan association, by and with the approval of the department, may, upon such terms as may be agreed upon and ratified by the members or stockholders of such association, reorganize such association and resume business as an active building and loan association.

(2) Ratification by members or stockholders thereof shall be expressed at a regular or special meeting of members duly called for that purpose, at which meeting a majority of the outstanding stock in a capital stock association or withdrawable deposits in a mutual association voting, either in person or by proxy, shall be sufficient to adopt such proposal.

(3) Notice of such meeting shall clearly indicate the purpose of the meeting.

History: En. Sec. 1, Ch. 4, L. 1935; re-en. Sec. 6355.50, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-151; amd. Sec. 22, Ch. 5, L. 1983.

Cross-References

Meetings of stockholders and directors, 32-2-208.

32-2-433 through 32-2-440 reserved.

32-2-441. Conversion into federal savings and loan associations. Any building and loan association or other home financing organization, by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders or members of any such association or at any special meeting of the shareholders or members of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders or members, by an affirmative vote of the majority of the shareholders or members, in person or by proxy, may declare by resolution the determination to convert the association into a federal savings and loan association.

(2) A copy of the minutes of the meeting of the shareholders or members verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed with the department within 10 days after the meeting. The verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders or members, such association shall take any action necessary to make it a federal savings and loan association, and within 10 days after receipt of the federal charter there shall be filed with the department a copy of the charter issued to such association by the federal home loan bank board or a certificate showing the organization of such association as a federal savings and loan association certified by or on behalf of the federal home loan bank board. Upon the filing of such instrument such association shall cease to be a state association and shall thereafter be a federal savings and loan association.

History: En. Sec. 1, Ch. 174, L. 1935; re-en. Sec. 6374.8, R.C.M. 1935; amd. Sec. 31, Ch. 71, L. 1977; R.C.M. 1947, 7-156; amd. Sec. 23, Ch. 5, L. 1983.

Cross-References

Change from state to national bank, 32-1-361.

Meetings of stockholders and directors, 32-2-208.

32-2-442. Effect of conversion of association — powers and privileges. At the time when such conversion becomes effective as hereinbefore provided, said association shall cease to be supervised by this state and all of the property of such association, including all of its right, title, and interest in and to all property of every kind and character whether real, personal, or mixed, shall immediately by operation of law and without any conveyance or transfer whatsoever and without any further act or deed continue to be vested in said association under its new name and style as a federal savings and loan association and under its new jurisdiction. Said federal savings and loan association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by it as a state association. Said federal savings and loan association at the time of the taking effect of such conversion shall continue responsible for all of the obligations of said state association to the same extent as though said conversion had not taken place; it being expressly declared that the federal savings and loan association shall be merely a continuation of the state association under a new name and new jurisdiction and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction.

History: **En. Sec. 2, Ch. 174, L. 1935; re-en. Sec. 6374.9, R.C.M. 1935; R.C.M. 1947, 7-157.**

Cross-References

National bank powers extended to state banks, 32-1-362.

Part 5

National Housing Act Loans

32-2-501. Associations empowered to make loans on securities authorized by National Housing Act. Subject to such regulations as may be prescribed by the federal housing administrator, pursuant to an act of congress cited as the "National Housing Act", approved by the president on June 27, 1934, and all amendments thereto as well as any amendments hereafter duly passed and approved, building and loan associations qualified to do business in this state are hereby empowered to make such loans, secured by mortgages upon real estate, and other advances of credit to members or others, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and members' accounts, and other contracts as are now, or may hereafter be, authorized or provided for by said National Housing Act and any amendments thereof duly passed and approved.

History: **En. Sec. 1, Ch. 38, L. 1935; re-en. Sec. 6356.1, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1943; R.C.M. 1947, 7-153; amd. Sec. 24, Ch. 5, L. 1983.**

Cross-References

Investments of financial institutions, 32-1-424.

Investments, 32-2-406.

Real estate loans limited by Congress, 32-2-407.

32-2-502. Transactions exempt from operation of state laws. All loans, charges, investments, advances of credit, purchases, sales, contracts for insurance of mortgages and members' accounts, and other contracts made pursuant to the powers granted in 32-2-501 through 32-2-503 shall be exempt from the operation and application of the general statutes of this state in conflict with said National Housing Act and the regulations issued thereunder.

History: **En. Sec. 2, Ch. 38, L. 1935; re-en. Sec. 6356.2, R.C.M. 1935; R.C.M. 1947, 7-154; amd. Sec. 25, Ch. 5, L. 1983.**

Cross-References

Contracts, Title 28, ch. 2, 3.

Loans of money — interest rates, Title 31, ch. 1, part 1.

32-2-503. Application of sections. The provisions of 32-2-501 through 32-2-503 shall apply only to loans, advances of credit, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and accounts of members, and other contracts made in connection with and incidental to loans secured by mortgages and to advances of credit, insured or to be insured, and accounts, insured or to be insured, under the provisions of said National Housing Act and amendments thereof duly passed and approved.

History: En. Sec. 3, Ch. 38, L. 1935; re-en. Sec. 6356.3, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1943; R.C.M. 1947, 7-155; amd. Sec. 26, Ch. 5, L. 1983.

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32-3-901. Taxation.
32-3-902. Stock transfer taxes.
32-3-903. Effect of participation in government programs.

Chapter Cross-References

Credit Transactions and Relationships, Title 31.

Insurance premium finance companies, Title 33, ch. 14.

Discrimination prohibited in financial transactions, 49-2-305, 49-2-307, 49-3-206.

Montana Uniform Transfers to Minors Act, Title 72, ch. 26.

Part 1
General Provisions

32-3-101. Short title. This chapter shall be known and may be cited as the "Montana Credit Union Act".

History: En. 14-601 by Sec. 1, Ch. 38, L. 1975; R.C.M. 1947, 14-601.

32-3-102. Definition and purposes. A credit union is a cooperative, nonprofit association, incorporated under this chapter for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

History: En. 14-602 by Sec. 2, Ch. 38, L. 1975; R.C.M. 1947, 14-602.

Cross-References

Commercial bank defined, 32-1-105.

Savings bank defined, 32-1-106.

Trust company defined — purposes for which may be formed, 32-1-107.

Investment company defined — purposes for which may be formed, 32-1-108.

Building and loan associations — purpose, 32-2-101.

32-3-103. Use of name exclusive. With the exception of a credit union organized under the provisions of this chapter or of any other credit union act or an association of credit unions or a recognized chapter thereof, any person, corporation, partnership, or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be fined not more than $500 or imprisoned not more than 1 year, or both, and may be permanently enjoined from using such words in its name.

History: En. 14-606 by Sec. 6, Ch. 38, L. 1975; R.C.M. 1947, 14-606.

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-3-104. Office facilities. (1) A credit union may change its place of business within this state upon written notice to the department of commerce.

(2) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

(3) A credit union may maintain, upon prior written notice to the department, additional offices at locations other than its principal place of business if the purpose of maintaining the additional offices is to furnish service to its members.

(4) The department shall approve any additional office unless a compelling reason for disapproval is found by the department. Competition with other financial institutions is not a sufficiently compelling reason for disapproval.

(5) If the department disapproves an additional office, the credit union shall be afforded an opportunity for a hearing according to Title 2, chapter 4, part 6. The purpose of the hearing shall be to determine whether a compelling reason exists for disapproval of the additional office.

History: En. 14-607 by Sec. 7, Ch. 38, L. 1975; R.C.M. 1947, 14-607; amd. Sec. 1, Ch. 140, L. 1981; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Branch bank — detached facilities, 32-1-372.

32-3-105. Fiscal year. The fiscal year of each credit union organized under this chapter shall end on December 31.

History: En. 14-608 by Sec. 8, Ch. 38, L. 1975; R.C.M. 1947, 14-608.

32-3-106. Instruction in schools. With the consent and under the direction of the state superintendent of public instruction, the organization, management, and extension of credit unions as set forth in this chapter may be taught in the public schools of this state.

History: En. 14-675 by Sec. 75, Ch. 38, L. 1975; R.C.M. 1947, 14-675.

Cross-References

Superintendent of Public Instruction — supervision of schools — powers and duties, 20-3-106.

Instructional assistance by Superintendent of Public Instruction, 20-7-114.

Part 2
Regulation

Part Cross-References

Special examination of credit unions by Department, 32-1-215.

32-3-201. Director of the department of commerce. (1) The director shall administer the laws of this state relating to credit unions. He may appoint or employ such special assistants, deputies, examiners, or other employees as are necessary for the purpose of administering or enforcing this chapter.

(2) The director may prescribe rules for the administration of this chapter and may establish chartering, supervisory, and examination fees. Fees so collected must be deposited in the state special revenue fund for the use of the department in its supervision function.

(3) The director shall, from time to time, issue rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk.

History: En. 14-609 by Sec. 9, Ch. 38, L. 1975; R.C.M. 1947, 14-609; amd. Sec. 5, Ch. 600, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State finance — fund structure, 17-2-102.

Suretyship, Title 28, ch. 11, part 4.

Casualty insurance, Title 33, ch. 23.

32-3-202. Reports. (1) Credit unions organized under this chapter shall report to the director annually on or before February 1 on forms supplied by him for that purpose. Additional reports may be required.

(2) A fine of $5 for each day a report is in arrears shall be levied against the offending credit union unless it is excused for cause by the director.

History: En. 14-610 by Sec. 10, Ch. 38, L. 1975; R.C.M. 1947, 14-610.

Cross-References

Duties of supervisory committee or board, 32-3-417.

32-3-203. Examinations. (1) The department of commerce shall annually examine or cause to be examined each credit union. Each credit union and all of its officers and agents shall be required to give to representatives of the director of the department full access to all books, papers, securities, records, and other sources of information under their control; and for the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination shall be forwarded to the executive officer of each credit union promptly after completion. The report shall contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and committeemen shall meet to consider matters contained in the report.

(3) In lieu of making an annual examination of a credit union, the director may accept an audit report of the condition of the credit union made by an auditor approved by the director. The cost of the audit shall be borne by the credit union.

History: En. 14-611 by Sec. 11, Ch. 38, L. 1975; R.C.M. 1947, 14-611; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Banks and trust companies — examination and supervision by Department, 32-1-211.

Building and loan associations — examinations by Department, 32-2-301.

32-3-204. Records. (1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with such rules as the director from time to time prescribes. In prescribing such rules, the director shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the director.

(3) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union.

History: En. 14-612 by Sec. 12, Ch. 38, L. 1975; R.C.M. 1947, 14-612.

Cross-References

Destruction of bank records, 32-1-491.

Reproduction of bank records — admissibility in evidence, 32-1-492.

Building and loan associations — reports and accounts prescribed by Department, 32-2-302.

32-3-205. Suspension. (1) If it appears that any credit union is bankrupt or insolvent or that it has willfully violated this chapter or is operating in an unsafe or unsound manner, the director of the department of commerce shall issue an order temporarily suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors shall be given notice by certified or registered mail of such suspension, which notice shall include a list of the reasons for such suspension and/or a list of the specific violations of this chapter.

(2) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the director. The credit union shall then file with the director a reply to the suspension notice and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(3) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the director may revoke the suspension notice and permit the credit union to resume normal operations.

(4) If the director, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

(5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the director may then revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union.

History: En. 14-664 by Sec. 64, Ch. 38, L. 1975; R.C.M. 1947, 14-664; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Injunctions, Title 27, ch. 19.

Dissolution, closing, and liquidation of banks, Title 32, ch. 1, part 5.

Insolvency or impairment of building and loan association — powers of Department, 32-2-309.

Share insurance, 32-3-611.

32-3-206. Authorized activities of credit unions. Upon written application to the director, a credit union may engage in any activity in which such credit union could engage were it operating as a federal chartered credit union at the time such authority is granted. Such powers shall include, but not by way of limitation, the power to do any act and own, possess, and carry as assets property of such character including stocks, bonds, or other debentures which, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions, notwithstanding any restrictions elsewhere contained in the statutes of the state of Montana except that the director may not charter a credit union not having a common bond of membership as defined in 32-3-304. The director shall approve an activity if he finds that it fosters competitive equality between state and federal credit unions and prevents adverse effects on members of state-chartered credit unions. If the director disapproves an activity, the credit union must be given an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying approval of the activity for which the credit union applied.

History: En. 14-676 by Sec. 76, Ch. 38, L. 1975; R.C.M. 1947, 14-676; amd. Sec. 1, Ch. 522, L. 1985.

Cross-References

Authorized activities of commercial bank, 32-1-105.

Authorized activities of savings bank, 32-1-106.

Authorized activities of trust company, 32-1-107.

Authorized activities of investment company, 32-1-108.

National bank powers extended to state banks, 32-1-362.

Powers and duties of building and loan associations, 32-2-401.

Conversion of charter, 32-3-323.

Part 3

Organization, Membership, and Dissolution

32-3-301. Organization procedure. (1) Any seven or more residents of this state, of legal age, who have a common bond defined in 32-3-304, may organize a credit union and become charter members thereof by complying with this section.

(2) The subscribers shall execute in duplicate articles of incorporation, which conform to the applicable Montana corporation law, and agree to the terms thereof, which articles shall state:

(a) the name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union in this state, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which shall be in $5 multiples of not less than $5 or more than $25;

(d) that the credit union shall be organized under this chapter for the purposes set forth therein;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which shall be not less than $5; and

(f) that the credit union may exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers which are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the same in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree. This agreement shall be submitted to the director of the department of commerce.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the director of the department of commerce. The director may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and he is satisfied that the proposed field of operation is favorable to the success of such credit union and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. He shall return a copy of the bylaws and the articles to the applicants or their representatives, which shall be preserved in the permanent files of the credit union. The application shall be acted upon within 30 days. The articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees therefor, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter shall not transact any business until formal approval of the charter has been received.

History: **En. 14-603 by Sec. 3, Ch. 38, L. 1975; R.C.M. 1947, 14-603; amd. Sec. 2, Ch. 274, L. 1981.**

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Formation of banks and trust companies, Title 32, ch. 1, part 3.

Organization of building and loan association, Title 32, ch. 2, part 2.

Election or appointment of officials, 32-3-403.

32-3-302. Form of articles and bylaws. In order to simplify the organization of credit unions, the director of the department of commerce shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this chapter, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall be available without charge to persons desiring to organize a credit union.

History: **En. 14-604 by Sec. 4, Ch. 38, L. 1975; R.C.M. 1947, 14-604; amd. Sec. 2, Ch. 274, L. 1981.**

Cross-References

Banks and trust companies — bylaws, 32-1-308.

Building and loan associations — bylaws, 32-2-204.

32-3-303. Amendments. (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the director of the department of commerce who shall approve or disapprove the amendments within 60 days.

(2) Amendments shall become effective upon:

(a) approval in writing by the director, for which no fee may be charged; and

(b) in the case of articles of incorporation, filing with the secretary of state.

History: En. 14-605 by Sec. 5, Ch. 38, L. 1975; amd. Sec. 32, Ch. 71, L. 1977; R.C.M. 1947, 14-605; amd. Sec. 2, Ch. 274, L. 1981.

32-3-304. Membership defined. (1) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid the required entrance fee or membership fee, or both, have subscribed for one or more shares and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(2) Credit union membership may include groups having a common bond of similar occupation, association, or interests or groups within a well-defined neighborhood, community, or rural district or employees of a common employer and members of the immediate family of such persons.

History: En. 14-615 by Sec. 15, Ch. 38, L. 1975; R.C.M. 1947, 14-615; amd. Sec. 1, Ch. 107, L. 1981.

Cross-References

Authorized activities of credit unions, 32-3-206.

32-3-305. Societies — associations. (1) Societies and partnerships composed primarily of individuals who are eligible for membership and corporations whose stockholders are composed primarily of such individuals may be admitted to membership in the same manner and under the same conditions as individuals.

(2) No loan may be made to any member society, partnership, or corporation in an aggregate amount that is in excess of 5% of the credit union's shares and retained earnings. Total loans to member societies, partnerships, and corporations is limited to an aggregate amount of 15% of the credit union's shares and retained earnings.

History: En. 14-616 by Sec. 16, Ch. 38, L. 1975; R.C.M. 1947, 14-616; amd. Sec. 2, Ch. 522, L. 1985.

Cross-References

Limitations on loans — banks and trust companies, 32-1-432.

Loans to managing officer or director — banks, 32-1-467.

Limitation on loans — building and loan associations, 32-2-415.

32-3-306. Other credit unions. Any credit union organized under this chapter may permit membership of any other credit union organized under this chapter or other laws.

History: En. 14-617 by Sec. 17, Ch. 38, L. 1975; R.C.M. 1947, 14-617.

Cross-References

Corporate credit unions, Title 32, ch. 3, part 8.

32-3-307. Limited-income persons. Existing credit unions may include within their field of membership limited-income persons, as defined by the director of the department of commerce, for whom credit union services are otherwise unavailable.

History: En. 14-618 by Sec. 18, Ch. 38, L. 1975; R.C.M. 1947, 14-618; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Director of Department of Commerce, 32-3-201.

32-3-308. Members who leave field. Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors.

History: En. 14-619 by Sec. 19, Ch. 38, L. 1975; R.C.M. 1947, 14-619.

Cross-References

Duties of directors, 32-3-412.

32-3-309. Liability of members. The members of the credit union shall not be personally or individually liable for the payment of its debts.

History: En. 14-620 by Sec. 20, Ch. 38, L. 1975; R.C.M. 1947, 14-620.

Cross-References

Building and loan associations — shares of stock subject to attachment, 32-2-264.

32-3-310. Meetings of members. (1) The annual meeting and any special meetings of the members of the credit union shall be held at the time, place, and in the manner indicated by the bylaws.

(2) At all such meetings a member shall have but one vote, irrespective of his shareholdings. No member may vote by proxy, but a member may vote by absentee ballot if the bylaws of the credit union so provide.

(3) A society, association, partnership, or corporation having membership in the credit union may be represented and have its vote cast by one of its members or shareholders, provided such person has been fully authorized by the organization's governing body.

(4) The board of directors may establish a minimum age, not greater than 18 years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both.

History: En. 14-621 by Sec. 21, Ch. 38, L. 1975; R.C.M. 1947, 14-621.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Banks and trust companies — selection of officers and employees — meetings and minutes, 32-1-325.

Building and loan associations — meetings of stockholders and directors, 32-2-208.

Minors and adults defined, 41-1-101.

32-3-311 through 32-3-320 reserved.

32-3-321. Liquidation. (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section and the applicable Montana corporation laws.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the director of the department of commerce thereof in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the director in writing as to whether or not the members approved the proposed liquidation.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation

shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least 10 days prior to such meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:

(a) expenses incidental to liquidating, including any surety bond that may be required;

(b) any liability due nonmembers; and

(c) special purpose thrift accounts as provided in this chapter. Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, he shall execute a certificate of dissolution on a form prescribed by the department and file the same with the department, together with all pertinent books and records of the liquidating credit union, whereupon such credit union shall be dissolved.

History: En. 14-665 by Sec. 65, Ch. 38, L. 1975; amd. Sec. 33, Ch. 71, L. 1977; R.C.M. 1947, 14-665; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Banks and trust companies — dissolution and disincorporation, 32-1-501.

Building and loan associations — voluntary liquidation and settlement, 32-2-431.

Business corporations — dissolution and liquidation, Title 35, ch. 1, part 9.

32-3-322. Merger. (1) Any credit union may, with the approval of the director of the department of commerce and compliance with the applicable Montana corporation law, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members duly called for such purpose.

(2) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which shall set forth all of the following:

(a) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) Such certificate and a copy of the plan of merger agreed upon shall be forwarded to the director, certified by him, and returned to both credit unions within 30 days.

(4) Upon return of the certificate from the director, all property rights and members' interest of the merged credit union shall vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union shall remain intact.

(5) This section shall be construed whenever possible to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law.

History: En. 14-666 by Sec. 66, Ch. 38, L. 1975; R.C.M. 1947, 14-666; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Consolidation or merger of banks, 32-1-371.

Building and loan associations — consolidation and transfer, 32-2-271.

32-3-323. Conversion of charter. (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the director of the department of commerce.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the director of the department of commerce and file proof of such compliance with said director.

History: En. 14-667 by Sec. 67, Ch. 38, L. 1975; R.C.M. 1947, 14-667; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Change from state to national bank, 32-1-361.

Conversion into federal savings and loan associations, 32-2-441.

Authorized activities of credit unions, 32-3-206.

Part 4

Operation and Officers

Part Cross-References

Authorized activities of credit unions, 32-3-206.

32-3-401. General powers. A credit union may:

(1) make contracts as provided for in this chapter;

(2) sue and be sued;

(3) adopt and use a common seal and alter same;

(4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its operations;

(5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;

(6) receive savings from its members in the form of shares or special-purpose thrift accounts;

(7) lend its funds to its members as hereinafter provided;

(8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;

(9) discount and sell any eligible obligations, subject to rules prescribed by the director;

(10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the director;

(11) invest surplus funds as provided in this chapter;

(12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies, and central type credit union organizations;

(13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;

(14) hold membership in other credit unions organized under this chapter or other laws and in other associations and organizations composed of credit unions;

(15) declare dividends and pay interest refunds to borrowers as provided in this chapter;

(16) collect, receive, and disburse moneys in connection with the sale of negotiable checks, money orders, and other money type instruments and for such other purposes as may provide benefit or convenience to its members and charge a reasonable fee for such services;

(17) perform such tasks and missions as are requested by the federal government or this state or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with this chapter;

(18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to such regulations as are prescribed by the director;

(19) make donations or contributions to any civic, charitable, or community organizations as authorized by the board of directors, subject to regulations as are prescribed by the director;

(20) purchase or make available insurance for its directors, officers, agents, employees, and members;

(21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any other pension or profit-sharing plan if the funds of such accounts are invested in shares of the credit union; or

(22) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision thereof.

History: En. 14-613 by Sec. 13, Ch. 38, L. 1975; R.C.M. 1947, 14-613; amd. Sec. 3, Ch. 522, L. 1985.

Cross-References

State Treasurer as treasurer of state agencies — deposits of money, 17-6-105.

Loans of money — interest rates, Title 31, ch. 1, part 1.

Powers and duties of building and loan associations, 32-2-401.

Authorized activities of credit unions, 32-3-206.

Insurance for members, 32-3-609.

32-3-402. Incidental powers. A credit union may exercise such incidental powers as are granted corporations organized under the laws of this state, including those that are necessary to enable it to promote and carry on most effectively its purposes.

History: En. 14-614 by Sec. 14, Ch. 38, L. 1975; R.C.M. 1947, 14-614.

32-3-403. Election or appointment of officials. (1) The credit union shall be directed by a board consisting of an odd number of directors, at least five in number, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for such terms as the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three members at the organization meeting and within 30 days following each annual meeting of the members for such terms as the bylaws provide. However, the bylaws of the credit union may provide that the supervisory committee members are elected for such terms as the bylaws provide by the members of the credit union at the annual meeting of the members or provide that the credit union may not have a supervisory committee. If the bylaws provide that the credit union may not have a supervisory committee, the duties and powers of the supervisory committee, as described in 32-3-417, are the responsibility of the board of directors.

(3) The board of directors shall appoint a credit committee consisting of an odd number, not less than three, for such terms as the bylaws provide or, in lieu of a credit committee, a credit manager.

History: En. 14-622 by Sec. 22, Ch. 38, L. 1975; R.C.M. 1947, 14-622; amd. Sec. 4, Ch. 522, L. 1985.

Cross-References

Banks and trust companies — selection of officers and employees, 32-1-325.

Building and loan associations — directors and officers, 32-2-206.

Organization procedures, 32-3-301.

Meetings of members, 32-3-310.

32-3-404. Record of board and committee members. Within 15 days after election or appointment, a record of the names and addresses of the members of the board, committees, and all officers of the credit union shall be filed with the department of commerce on forms provided by the department.

History: En. 14-623 by Sec. 23, Ch. 38, L. 1975; R.C.M. 1947, 14-623; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Records, 32-3-204.

32-3-405. Vacancies. The board of directors shall fill any vacancies occurring in the board until successors elected at the next annual meeting have qualified. The board shall also fill vacancies in the credit and supervisory committees.

History: En. 14-624 by Sec. 24, Ch. 38, L. 1975; R.C.M. 1947, 14-624.

Cross-References

Banks and trust companies — board of directors — qualifications, tenure, and vacancies, 32-1-322.

32-3-406. Compensation of officials. No officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer may be compensated for his service as such, but reasonable life, health, accident, and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business.

History: En. 14-625 by Sec. 25, Ch. 38, L. 1975; R.C.M. 1947, 14-625.

Cross-References

Liability insurance for officers, 32-3-610.

Life insurance, Title 33, ch. 20.

Disability insurance, Title 33, ch. 22.

32-3-407. Conflicts of interest. No director, committee member, officer, agent, or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested.

History: **En. 14-626 by Sec. 26, Ch. 38, L. 1975; R.C.M. 1947, 14-626.**

Cross-References

Standards of conduct for public employees, Title 2, ch. 2.

Purchase of obligation of bank by officer, 32-1-466.

Loans by bank to managing officer or director, 32-1-467.

Purchase of obligations of building and loan association by officer, 32-2-108.

Purchase of assets of building and loan association by officer, 32-2-109.

32-3-408. Executive officers. (1) At their organization meeting and within 15 days following each annual meeting of the members, the directors shall elect from their own number:

(a) an executive officer, who may be designated as chairman of the board or president;

(b) a vice-chairman of the board or one or more vice-presidents;

(c) a treasurer; and

(d) a secretary.

(2) The treasurer and the secretary may be the same individual.

(3) The persons so elected shall be the executive officers of the corporation.

(4) The terms of the officers shall be 1 year or until their successors are chosen and have duly qualified.

(5) The duties of the officers shall be prescribed in the bylaws.

(6) The board of directors may employ an officer in charge of operations, whose title shall be either president or general manager or president and general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union.

History: **En. 14-627 by Sec. 27, Ch. 38, L. 1975; R.C.M. 1947, 14-627.**

Cross-References

Banks and trust companies — selection of officers and employees, 32-1-325.

Building and loan associations — directors and officers, 32-2-206.

32-3-409. Authority of directors. The board of directors shall have the general direction of the business affairs, funds, and records of the credit union.

History: **En. 14-628 by Sec. 28, Ch. 38, L. 1975; R.C.M. 1947, 14-628.**

Cross-References

Records, 32-3-204.

Authorized activities of credit unions, 32-3-206.

32-3-410. Executive committee. From the persons elected to the board, the board may appoint an executive committee of not less than three directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board.

History: **En. 14-629 by Sec. 29, Ch. 38, L. 1975; R.C.M. 1947, 14-629.**

32-3-411. Meetings of directors. The board of directors and the executive committee shall meet as often as necessary, but one body must meet at least monthly and the other at least quarterly.

History: **En. 14-630 by Sec. 30, Ch. 38, L. 1975; R.C.M. 1947, 14-630.**

Cross-References

Banks and trust companies — selection of officers and employees — meetings and minutes, 32-1-325.

Building and loan associations — meetings of stockholders and directors, 32-2-208.

32-3-412. Duties of directors. The directors shall:

(1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the director, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, or other agent. However, the directors have the option of providing coverage under this subsection for only the treasurer elected by the board.

(3) determine from time to time the interest rate or rates consistent with this chapter to be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;

(4) fix from time to time the maximum amount which may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares which may be owned by a member, such limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of such persons necessary to carry on the business of the credit union, including the credit manager, loan officers, and auditing assistants requested by the supervisory committee, and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees considered necessary; and

(14) perform such other duties as the members from time to time direct and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members.

History: En. 14-631 by Sec. 31, Ch. 38, L. 1975; amd. Sec. 45, Ch. 359, L. 1977; R.C.M. 1947, 14-631; amd. Sec. 5, Ch. 522, L. 1985.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Banks — bonding of employees, 32-1-461.

Membership defined, 32-3-304.

Members who leave field, 32-3-308.

Dividends, 32-3-502.

Loans and insurance, Title 32, ch. 3, part 6.

Investment of funds, 32-3-701.

32-3-413. Authority of credit committee. The credit committee shall have the general supervision of all loans to members.

History: En. 14-632 by Sec. 32, Ch. 38, L. 1975; R.C.M. 1947, 14-632.

Cross-References
Loans — purposes and terms, 32-3-601.
Loan application, 32-3-602.
Loan limit, 32-3-603.

32-3-414. Meeting of credit committee. The credit committee shall meet as often as the business of the credit union requires and not less frequently than once a month to consider applications for loans. No loan shall be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered.

History: En. 14-633 by Sec. 33, Ch. 38, L. 1975; R.C.M. 1947, 14-633.

Cross-References
Loan application, 32-3-602.

32-3-415. Loan officers. (1) The credit committee may appoint one or more loan officers and delegate the power to approve loans, subject to such limitations or conditions as the credit committee prescribes.

(2) Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee.

History: En. 14-634 by Sec. 34, Ch. 38, L. 1975; R.C.M. 1947, 14-634.

Cross-References
Loan application, 32-3-602.

32-3-416. Credit manager. The credit committee may be dispensed with and a credit manager empowered to approve or disapprove loans under conditions prescribed by the board of directors. In the event the credit committee is dispensed with, the procedures prescribed in 32-3-413 through 32-3-415 do not apply, and no loans shall be made unless approved by the credit manager, except the credit manager may appoint one or more loan officers with the power to approve loans, subject to such limitations or conditions as he prescribes.

History: En. 14-635 by Sec. 35, Ch. 38, L. 1975; R.C.M. 1947, 14-635.

Cross-References
Loan application, 32-3-602.
Loan limit, 32-3-603.

32-3-417. Duties of supervisory committee or board. (1) The board of directors or supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. It shall make or cause to be made such supplementary audits or examinations as it deems necessary or as are required by the director or by the board of directors and submit reports of these supplementary audits to the board of directors.

(2) The board of directors or supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years.

History: En. 14-636 by Sec. 36, Ch. 38, L. 1975; R.C.M. 1947, 14-636; amd. Sec. 6, Ch. 522, L. 1985.

Cross-References
Reports, 32-3-202.
Examinations, 32-3-203.
Records, 32-3-204.

32-3-418. Suspension and removal of officials. (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action.

(2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which shall

be held not less than 7 or more than 21 days after such suspension. At such meeting the suspension shall be acted upon by the members.

(3) Any member of the supervisory committee may be removed by the board of directors for failure to perform his duties in accordance with this chapter, the articles of incorporation, or the bylaws.

History: En. 14-637 by Sec. 37, Ch. 38, L. 1975; R.C.M. 1947, 14-637.

Cross-References

Banks and trust companies — removal of directors, officers, or employees, 32-1-468.

Removal of directors or officers of financial institutions, Title 32, ch. 1, part 9.

Building and loan associations — removal of directors, 32-2-207.

32-3-419. Calling of special meeting. The supervisory committee by a majority vote may call a special meeting of the members to consider any violation of this chapter, the credit union's charter or bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized.

History: En. 14-638 by Sec. 38, Ch. 38, L. 1975; R.C.M. 1947, 14-638.

Cross-References

Meetings of members, 32-3-310.

Part 5

Shares and Accounts

32-3-501. Shares. (1) The capital of a credit union consists of the payments by the members on shares.

(2) Shares may be subscribed to, paid for, and transferred in a manner as the bylaws prescribe.

(3) A certificate need not be issued to denote ownership of a share in a credit union.

(4) This chapter does not restrict or prohibit the issuance of shares in any type of account described in Title 72, chapter 6, part 2. However, the party, the beneficiary, or the agent of an account may not vote, obtain loans, hold office, or be required to pay an entrance or membership fee unless the party, beneficiary, or agent is a member of the credit union.

History: En. 14-639 by Sec. 39, Ch. 38, L. 1975; R.C.M. 1947, 14-639; amd. Sec. 132, Ch. 494, L. 1993.

Cross-References

Organization procedure, 32-3-301.

Form of articles and bylaws, 32-3-302.

General powers of credit unions, 32-3-401.

32-3-502. Dividends. At the intervals and for the periods that the board of directors authorizes and after providing for the required reserves, the board of directors may declare dividends to be paid from the undivided earnings at the rates and upon the classes of shares that the board determines. The dividends must be paid on all shares outstanding at the close of the period for which the dividend is declared.

History: En. 14-640 by Sec. 40, Ch. 38, L. 1975; R.C.M. 1947, 14-640; amd. Sec. 1, Ch. 365, L. 1997.

Cross-References

Building and loan associations — payment of expenses — losses — dividends — reserve fund, 32-2-411.

Duties of directors, 32-3-412.

32-3-503. Thrift accounts. Christmas clubs, vacation clubs, and other thrift accounts may be operated under conditions established by the board of directors.

History: En. 14-641 by Sec. 41, Ch. 38, L. 1975; R.C.M. 1947, 14-641.

Cross-References

Duties of directors, 32-3-412.

32-3-504. Minors' accounts. Shares may be issued to a minor who may withdraw the shares including the dividends and interest thereon. Share payments made by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

History: En. 14-642 by Sec. 42, Ch. 38, L. 1975; R.C.M. 1947, 14-642.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Banks and trust companies — deposit in name of minor, 32-1-444.

Building and loan associations — shares held by minor, 32-2-418.

Power of minors to contract, Title 41, ch. 1, part 3.

32-3-505. Joint accounts. (1) A member may designate any person or persons to hold shares and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

History: En. 14-643 by Sec. 43, Ch. 38, L. 1975; R.C.M. 1947, 14-643.

Cross-References

Building and loan associations — joint ownership, 32-2-416.

Joint tenancy — how created, 70-20-105.

32-3-506. Trust accounts. (1) Shares may be issued in the name of a member in trust for a beneficiary, including a minor; but no beneficiary, unless a member in his own right, shall be permitted to vote, obtain loans, hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such shares to such member shall, to the extent of such payment, discharge the liability of the credit union to the member and the beneficiary; and the credit union shall be under no obligation to see the application of such payment.

(3) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written notice of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary.

History: En. 14-644 by Sec. 44, Ch. 38, L. 1975; R.C.M. 1947, 14-644.

Cross-References

Building and loan associations — trust — payment, 32-2-417.

Trust Code, Title 72, ch. 33 through 36.

32-3-507. Liens. The credit union shall have a lien on the shares and accumulated dividends or interest of a member in his individual, joint, or trust account for any sum past due the credit union from said member or for any loan endorsed by him.

History: En. 14-645 by Sec. 45, Ch. 38, L. 1975; R.C.M. 1947, 14-645.

Cross-References

Liens, Title 71, ch. 3.

32-3-508. Dormant accounts. (1) If a credit union is unable to contact a member, beneficiary, or other person via first-class mail at the last address shown on the records of the credit union and if such inability continues for a period of more than 5 years, all shares, accounts, dividends, interest, and other sums due or standing in the name of such member, beneficiary, or other person may, by action of the board of directors, be segregated and thereafter no dividends or interest will accrue thereto.

(2) The member may reclaim any such sums by proper administrative or judicial proceedings or in accordance with the Uniform Disposition of Unclaimed Property Act.

(3) This section does not apply to shares, accounts, dividends, interest, and other sums due to or standing in the name of two or more persons unless the credit union is unable to contact any such persons in the manner and during the period specified in subsection (1).

History: En. 14-646 by Sec. 46, Ch. 38, L. 1975; R.C.M. 1947, 14-646.

32-3-509. Reduction in shares. (1) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the entire membership order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members.

(2) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided proportionately among the shareholders whose assets were reduced, but only to the extent of such reduction.

History: En. 14-647 by Sec. 47, Ch. 38, L. 1975; R.C.M. 1947, 14-647.

Cross-References

Building and loan associations — funds for contingent losses, 32-2-410.

Meetings of members, 32-3-310.

32-3-510. Withdrawals. Shares may be withdrawn for payment to the account holder or to third parties in such manner and in accordance with such procedures as may be established by the board of directors.

History: En. Sec. 8, Ch. 522, L. 1985.

Cross-References

Authorized activities of credit unions, 32-3-206.

Part 6
Loans and Insurance

32-3-601. Loans — purposes, terms. A credit union may loan to members for such purpose and upon such security and terms as the credit committee, credit manager, or loan officer approves.

History: En. 14-648 by Sec. 48, Ch. 38, L. 1975; R.C.M. 1947, 14-648; amd. Sec. 6, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983.

Cross-References

Loans of money — what constitutes, 31-1-101.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

32-3-602. Loan application. Every application for a loan shall be made in writing upon a form which the credit committee, credit manager, or loan officer prescribes. The application shall state the purpose for which the loan is desired and the security, if any, offered. Each loan shall be evidenced by a written document.

History: En. 14-649 by Sec. 49, Ch. 38, L. 1975; R.C.M. 1947, 14-649.

Cross-References

Authority of credit committee, 32-3-413.

32-3-603. Loan limit. No loan shall be made to any member in an aggregate amount in excess of 10% of the credit union's total assets.

History: En. 14-650 by Sec. 50, Ch. 38, L. 1975; R.C.M. 1947, 14-650.

Cross-References

Banks and trust companies — limitations on loans, 32-1-432.

Building and loan associations — limitation on loans, 32-2-415.

Duties of directors, 32-3-412.

32-3-604. Security. In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor, or assignment of shares of wages, in a manner consistent with the laws of this state, shall be deemed security within the meaning of this chapter. The adequacy of any security shall be determined by the credit committee, credit manager, or loan officer, subject to this chapter and the bylaws.

History: En. 14-651 by Sec. 51, Ch. 38, L. 1975; R.C.M. 1947, 14-651.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Banks — giving security for deposit prohibited — exceptions, 32-1-447.

Authority of credit committee, 32-3-413.

Loan officers, 32-3-415.

Credit manager, 32-3-416.

32-3-605. Installments. A member may receive a loan in installments or in one sum and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business.

History: En. 14-652 by Sec. 52, Ch. 38, L. 1975; R.C.M. 1947, 14-652.

Cross-References

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

32-3-606. Line of credit. Upon their own motion or upon application by a member, the credit committee or credit manager may approve a line of credit in advance, and advances may be granted to each member within the limit of such extension of credit. Where a line of credit has been approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such extension of credit.

History: En. 14-653 by Sec. 53, Ch. 38, L. 1975; R.C.M. 1947, 14-653.

Cross-References

U.C.C. — letters of credit, Title 30, ch. 5.

Loan limit, 32-3-603.

32-3-607. Other loan programs. (1) A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations.

(2) A credit union may participate in guaranteed loan programs of the federal and state government.

(3) A credit union may purchase the conditional sales contracts, notes, and similar instruments of its members.

History: En. 14-654 by Sec. 54, Ch. 38, L. 1975; R.C.M. 1947, 14-654.

Cross-References

Student loan program, Title 20, ch. 26, part 11.

Student loan program — Council duties, 20-26-1104.

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

Building and loan associations allowed to make loans guaranteed under Servicemen's Readjustment Act of 1944, 32-2-420.

National Housing Act loans, Title 32, ch. 2, part 5.

32-3-608. Loans to officials. (1) A credit union may make loans to its directors, employees, loan officers, and credit manager and to members of its supervisory and credit committees if:

(a) the loan complies with the requirements of this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(b) the loan or aggregate of loans to any one director or committee member that exceeds $20,000 plus pledged shares must be reported to the board of directors. Loans to directors and committee members may not exceed an aggregate of 20% of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, the credit manager, and members of its supervisory and credit committees to act as comakers, guarantors, or endorsers of loans to other members, except when the loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds $20,000, a report to the board of directors is required.

History: En. 14-655 by Sec. 55, Ch. 38, L. 1975; R.C.M. 1947, 14-655; amd. Sec. 2, Ch. 365, L. 1997.

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

Banks and trust companies — loans to managing officer or director, 32-1-467.

Building and loan associations — limitation on loans, 32-2-415.

32-3-609. Insurance for members. A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, or loan balances or to any combination of them.

History: En. 14-656 by Sec. 56, Ch. 38, L. 1975; R.C.M. 1947, 14-656.

Cross-References

General powers of credit union, 32-3-401.

Authorization of insurers — certificate of authority required, 33-2-101.

32-3-610. Liability insurance for officers. A credit union may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability.

History: En. 14-657 by Sec. 57, Ch. 38, L. 1975; R.C.M. 1947, 14-657.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

Suretyship insurance, Title 33, ch. 26.

32-3-611. Share insurance. (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan approved by the commissioner of insurance and the director of the department.

(2) No credit union may begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan has been furnished to the director of the department of commerce.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) The director of the department of commerce shall make available reports of condition and examination reports to the administrator of the national credit union administration or any official of an insurance plan and may accept any report of examination made on behalf of such administrators or officials. The director may

appoint the administrator of the national credit union administration or any official of an insurance plan as liquidating agent of an insured credit union.

History: En. 14-658 by Sec. 58, Ch. 38, L. 1975; R.C.M. 1947, 14-658; amd. Sec. 7, Ch. 36, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 7, Ch. 522, L. 1985.

Cross-References

Federal Deposit Insurance Corporation — definition of banking institution, 32-1-601.

Part 7

Investments and Reserves

32-3-701. Investment of funds. Funds not used in loans to members may be invested in:

(1) securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America, or any agency thereof, or in any trust or trusts established for investing directly or collectively in the same;

(2) general obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by congress, or any political subdivisions thereof;

(3) certificates of deposit or passbook type accounts issued by a state or national bank, mutual savings bank, building and loan association, or savings and loan association;

(4) loans to or in shares or deposits of other credit unions;

(5) the capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association, or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are primarily confined or restricted to credit unions or organizations of credit unions and provided the purposes for which such agency or association is organized are designed primarily to service or otherwise assist credit union operations;

(6) shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding 10% of the shares and surplus of the credit union;

(7) loans to any credit union association or corporation, national or state, of which the credit union is a member, except that such investments shall be limited to 2% of the assets of the credit union.

History: En. 14-659 by Sec. 59, Ch. 38, L. 1975; R.C.M. 1947, 14-659.

Cross-References

Coal severance tax bonds — legal investments, 17-5-718.

Highway revenue bonds — legal investments, 17-5-930.

Economic development bonds as legal investments, 17-5-1525.

Municipal finance consolidation bonds as legal investments, 17-5-1628.

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Banks and trust companies — demand or time deposits, 32-1-445.

Building and loan associations — payment of expenses — losses — dividends — reserve fund, 32-2-411.

Authorized activities of credit unions, 32-3-206.

General powers of credit unions, 32-3-401.

Corporate credit unions, Title 32, ch. 3, part 8.

Cooperative associations — shares, dividends, and distributions, Title 35, ch. 15, part 4.

Trust Code, Title 72, ch. 33 through 36.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

32-3-702. Makeup of regular reserve. (1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:

(a) 10% of gross income until the regular reserve equals 5% of the total of outstanding loans and risk assets; then

(b) 7% of gross income until the regular reserve equals 6% of the total of outstanding loans and risk assets; then

(c) 5% of gross income until the regular reserve equals 7% of the total of outstanding loans and risk assets.

(2) Whenever the regular reserve falls below 7%, 6%, or 5% of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 5%, 6%, or 7%.

(3) Any entrance fees, charges, and transfer fees shall, after payment of organization expense, be added to the regular reserve.

History: En. 14-660 by Sec. 60, Ch. 38, L. 1975; R.C.M. 1947, 14-660.

Cross-References

Banks allowed to join federal reserve bank, 32-1-373.

Building and loan associations — fund for contingent losses, 32-2-410.

32-3-703. Use of regular reserve. The regular reserve shall belong to the credit union and shall be used to meet losses including, with prior approval of the director of the department of commerce, losses from the sale of investments or securities. The regular reserve may not be used to meet losses resulting from an excess of expenses over income and may not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director of the department of commerce.

History: En. 14-661 by Sec. 61, Ch. 38, L. 1975; R.C.M. 1947, 14-661; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 219, L. 1983.

Cross-References

Director of Department of Commerce, 32-3-201.

Liquidation, 32-3-321.

Reduction in shares, 32-3-509.

32-3-704. Risk assets defined. For the purpose of establishing the reserves required, all assets except the following are considered risk assets:

(1) cash on hand;

(2) deposits and shares in federal or state banks, savings and loan associations, and credit unions;

(3) assets that are insured, fully guaranteed as to principal and interest, or due from the United States government or its agencies, the federal national mortgage association, or the government national mortgage association;

(4) loans to other credit unions;

(5) loans to students insured under the provisions of Title IV, part B, of the Higher Education Act of 1965, or similar state insurance programs;

(6) loans insured under Title I of the National Housing Act by the federal housing administration;

(7) shares in corporate credit unions organized under this chapter or of any other state law or of the Federal Credit Union Act;

(8) common trust investments that deal in investments authorized by this chapter;

(9) prepaid expenses;

(10) accrued interest on nonrisk investments;

(11) loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

(12) furniture and equipment; and

(13) land and buildings.

History: En. 14-662 by Sec. 62, Ch. 38, L. 1975; R.C.M. 1947, 14-662; amd. Sec. 1, Ch. 4, L. 1991; amd. Sec. 42, Ch. 18, L. 1995.

Cross-References

Student loan program, Title 20, ch. 26, part 11.

Student loan program — Council duties, 20-26-1104.

National Housing Act loans, Title 32, ch. 2, part 5.

32-3-705. Special reserves. In addition to such regular reserve, special reserves to protect the interest of members shall be established:

(1) when required by regulation; or

(2) when found by the board of directors of the credit union or by the director of the department of commerce, in any special case, to be necessary for that purpose.

History: En. 14-663 by Sec. 63, Ch. 38, L. 1975; R.C.M. 1947, 14-663; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Director of Department of Commerce, 32-3-201.

Authority of directors, 32-3-409.

Duties of directors, 32-3-412.

Part 8

Corporate Credit Unions

32-3-801. Organization. A corporate credit union may be organized and operated under this chapter and is subject to all provisions not inconsistent with this part. The credit union shall use the term "corporate" in its official name.

History: En. 14-668 by Sec. 68, Ch. 38, L. 1975; R.C.M. 1947, 14-668; amd. Sec. 1, Ch. 66, L. 1993; amd. Sec. 43, Ch. 18, L. 1995.

32-3-802. Purpose — membership. (1) A corporate credit union must be operated primarily for the purpose of serving other credit unions.

(2) Membership in a corporate credit union must include credit unions organized and operating under this chapter or under any other credit union law.

(3) Membership may also include:

(a) officers, directors, committee members, and employees of credit unions; or

(b) organizations and associations of those persons or organizations enumerated in subsections (2) and (3)(a).

(4) The membership of a corporate credit union may not include more than seven natural persons as described in subsection (3)(a).

History: En. 14-669 by Sec. 69, Ch. 38, L. 1975; R.C.M. 1947, 14-669; amd. Sec. 2, Ch. 66, L. 1993.

Cross-References

Credit union membership defined, 32-3-304.

Other credit unions, 32-3-306.

Liquidation of credit unions, 32-3-321.

General powers of credit unions, 32-3-401.

32-3-803. Voting representative — conflict of interest. (1) Each credit union that is a member of a corporate credit union may designate one person to be its voting representative in the corporate credit union. The person must be designated by the board of directors of the member credit union. The voting representative is eligible to hold office in the corporate credit union as if the person were a member of the corporate credit union.

(2) (a) A director, committee member, officer, agent, or employee may not in any manner participate in the deliberation or determination of any question affecting that person's personal pecuniary interest.

(b) A director, officer, agent, or employee may not in any manner participate in the determination of any matter material in amount, as defined by rule by the department, affecting the pecuniary interest of any corporation, partnership, or association, other than the corporate credit union, in which that person has a direct or indirect interest, except for matters involving payment of dividends to the membership.

(3) The department shall adopt rules implementing this section in substantial conformance with Title 12, part 704, Code of Federal Regulations.

History: En. 14-670 by Sec. 70, Ch. 38, L. 1975; R.C.M. 1947, 14-670; amd. Sec. 3, Ch. 66, L. 1993; amd. Sec. 140, Ch. 42, L. 1997; amd. Sec. 3, Ch. 365, L. 1997.

Cross-References

Duties of directors, 32-3-412.

32-3-804. Additional rights and powers — department rules. (1) Except as limited by this part and rules adopted pursuant to this part, a corporate credit union has all of the rights and powers of any other credit union organized under this chapter and the additional rights and powers specified in this part.

(2) A corporate credit union may, as permitted by rules of the department, make loans to other credit unions and provide correspondent services and other financial services to other credit unions.

(3) A corporate credit union may, as permitted by rules of the department, invest in and grant loans to associations of credit unions, central funds of credit unions, or organizations chartered to provide service to credit unions.

(4) A corporate credit union may, as permitted by rules of the department, borrow and accept money from any source and issue notes or debentures.

(5) A corporate credit union may, as permitted by rules of the department, make reasonable and prudent investments.

(6) The department shall adopt rules governing corporate credit union loans, borrowing, investments, strategic planning, funds management, capital goals, and services. The rules must be in substantial conformance with Title 12, part 704, Code of Federal Regulations.

(7) A corporate credit union may issue membership capital accounts as provided in 32-3-805.

(8) A corporate credit union may issue paid-in capital and nonmember paid-in capital as provided in 32-3-810.

(9) A corporate credit union with corporate shareholdings equal to or in excess of 95% of its total assets may, by vote of its board of directors, elect exemption of insurance on share accounts under the provisions of Title II of the Federal Credit Union Act.

History: En. 14-671 by Sec. 71, Ch. 38, L. 1975; amd. Sec. 1, Ch. 111, L. 1977; R.C.M. 1947, 14-671; amd. Sec. 1, Ch. 233, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 4, Ch. 66, L. 1993; amd. Sec. 4, Ch. 365, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

General powers of credit unions, 32-3-401.

Investment of funds, 32-3-701.

32-3-805. Membership capital accounts. (1) A corporate credit union may issue membership capital accounts to members that are available to cover losses that exceed reserves and undivided earnings and paid-in capital.

(2) (a) For purposes of this section, "membership capital account" means a share, deposit, term certificate, adjusted balance, or other account that:

(i) is established, at a minimum, as a 3-year notice account;

(ii) is limited to members;

(iii) is not subject to share insurance coverage by the national credit union share insurance fund or other deposit insurers; and

(iv) in the event of liquidation of the corporate credit union, is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured obligations to shareholders and the national credit union share insurance fund.

(b) Upon written notice of intent to withdraw membership capital, the balance of the account will be frozen with no annual adjustment until the conclusion of the notice period, except in the case of a credit union that is placed into liquidation, is purchased and assumed, or is merged.

(c) Upon notification of intent to withdraw, the amount of the account on notice that may be considered membership capital is reduced by a constant monthly amortization that ensures that the recognition of membership capital is fully amortized at the end of the notice period.

(d) The full balance of a membership capital account that has been placed on notice, not just the remaining nonamortized portion, is available to absorb losses in excess of reserves and undivided earnings and of paid-in capital until the funds are released by the corporate credit union at the conclusion of the notice period.

(3) A membership capital account may not be used to pledge borrowings.

(4) Corporate credit unions that issue membership capital accounts shall disclose the terms and conditions of the account when it is opened and at least annually thereafter.

History: En. Sec. 5, Ch. 66, L. 1993; amd. Sec. 5, Ch. 365, L. 1997.

32-3-806. Fixed assets — department rules. (1) A corporate credit union may not invest in fixed assets if the aggregate of those investments would exceed 15% of capital, unless the credit union receives prior written approval from the department and the national credit union administration board.

(2) The department shall adopt rules for the administration of subsection (1) and for governing ownership of fixed assets by a corporate credit union. The rules must be in substantial conformance with Title 12, part 704, Code of Federal Regulations.

History: En. Sec. 6, Ch. 66, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

32-3-807. Corporate reserves — department rules. (1) A corporate credit union shall maintain a minimum capital to assets ratio according to rules adopted by the department in substantial conformance with Title 12, part 704, Code of Federal Regulations.

(2) The department shall adopt rules for the administration of subsection (1).

History: En. Sec. 7, Ch. 66, L. 1993; amd. Sec. 6, Ch. 365, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

32-3-808. Annual audit. (1) The supervisory committee of a corporate credit union shall require an annual opinion audit to be made by an independent, licensed certified public accountant and shall submit the audit report to the board of directors. A summary of the audit report must be submitted to the membership at the next annual meeting.

(2) The auditor's workpapers must be made available for review by state and federal regulatory examiners during any examination conducted by the examiners.

(3) A copy of the audit report and reportable conditions letter, otherwise known as the management letter, must be submitted to the department and the national credit union administration within 30 days after receipt by the board of directors.

History: En. Sec. 8, Ch. 66, L. 1993.

32-3-809. Contracts and written agreements. Services, facilities, personnel, or equipment shared with any party must be supported by a written contract or agreement that specifies the duties and responsibilities of each party and that fully supports and documents the allocation of service fees and expenses.

History: En. Sec. 9, Ch. 66, L. 1993.

32-3-810. Paid-in capital defined — authorized. (1) "Paid-in capital" means accounts or other interests of a corporate credit union that:

(a) may not exceed reserves and undivided earnings;

(b) may include both member paid-in capital and nonmember paid-in capital;

(c) are available to cover losses that exceed reserves and undivided earnings;

(d) are not insured by the national credit union share insurance fund (NCUSIF) or other share or deposit insurers;

(e) are callable only at the option of the corporate credit union and only if the corporate credit union meets its minimum level of required capital after the funds are called; and

(f) in the event of liquidation of the corporate credit union, are payable only after satisfaction of all liabilities of the liquidation estate, including uninsured share obligations to the shareholders, the NCUSIF, and membership capital holders.

(2) (a) A corporate credit union may issue paid-in capital to its members.

(b) Member paid-in capital must have an initial maturity of 20 years.

(c) A corporate credit union may not condition membership, services or prices for services on a member's ownership of paid-in capital.

(d) When a paid-in capital instrument has a remaining maturity of 5 years, the amount of the instrument that may be considered paid-in capital for the purposes of this part is reduced by a constant monthly amortization that ensures the recognition of paid-in capital is fully amortized when the instrument has a remaining maturity of 3 years.

(e) The terms and conditions of any member paid-in capital instrument must be disclosed to the recorded owner of the instrument at the time the instrument is created and at least annually thereafter.

(3) A corporate credit union may issue nonmember paid-in capital accounts. However, the corporate credit union may only issue the accounts after approval by the department and the national credit union administration (NCUA), and following an evaluation by the NCUA of the strategic purpose and financial impact of issuing the accounts, the corporate credit union's financial condition and management capabilities, the maturity and capital amortization schedules of the paid-in capital instrument; and the participation, voting, acceleration, redemption, or other rights of the holder.

History: En. Sec. 9, Ch. 365, L. 1997.

Part 9
Taxation

Part Cross-References

Taxation of corporations, Title 15, ch. 31.

32-3-901. Taxation. All credit unions organized under this or any other credit union law shall have the same immunity from state and local taxation that federal credit unions have from time to time under the laws of the United States.

History: En. 14-672 by Sec. 72, Ch. 38, L. 1975; R.C.M. 1947, 14-672.

Cross-References

Conversion of charter by credit union, 32-3-323.

32-3-902. Stock transfer taxes. The shares of any credit union shall not be subject to stock transfer taxes, either when issued or when transferred from one member to another.

History: En. 14-673 by Sec. 73, Ch. 38, L. 1975; R.C.M. 1947, 14-673.

Cross-References

Shares, 32-3-501.

32-3-903. Effect of participation in government programs. The participation by a credit union in any government program providing unemployment, social security, old-age pension, or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

History: En. 14-674 by Sec. 74, Ch. 38, L. 1975; R.C.M. 1947, 14-674.

CHAPTER 4
DEVELOPMENT CORPORATION ACT

Part 1 — General Provisions

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Chapter Cross-References

Credit Transactions and Relationships, Title 31.

Corporations, Partnerships, and Associations, Title 35.

Part 1
General Provisions

32-4-101. Definitions. As used in this chapter, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "board of directors"—the board of directors of a corporation created under this chapter;

(2) "corporation"—a Montana development corporation created under this chapter;

(3) "financial institution"—any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds;

(4) "loan limit"—for any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this chapter;

(5) "member"—any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this chapter, upon its call and in accordance with the provisions of this chapter.

History: En. Sec. 2, Ch. 128, L. 1969; R.C.M. 1947, 15-2602; amd. Sec. 1, Ch. 320, L. 1983.

Cross-References

Definition of regulated lender, 31-1-111.

32-4-102. Purpose. (1) The purposes of the corporation shall be to:

(a) promote, stimulate, develop, and advance the business prosperity and economic welfare of the state of Montana and its citizens;

(b) encourage and assist through loans, investments, or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry;

(c) stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standards of living of the citizens of this state;

(d) cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and

(e) provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

(2) In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of Title 35 the corporation shall, subject to the restrictions and limitations herein contained, have the additional powers and functions enumerated herein.

History: En. Sec. 1, Ch. 128, L. 1969; R.C.M. 1947, 15-2601.

Cross-References

Economic development bonds, Title 17, ch. 5, part 15.

Development coordination — planning and economic development, Title 90, ch. 1, part 1.

Secondary industry and commercial development, Title 90, ch. 5.

32-4-103. Credit of state and local governments not pledged. Under no circumstances is the credit of the state, county, or municipal governments or their agencies or authorities pledged under this chapter.

History: En. Sec. 17, Ch. 128, L. 1969; R.C.M. 1947, 15-2617; amd. Sec. 1, Ch. 497, L. 1989.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Obligations of Board of Housing — credit of state not pledged, 90-6-123.

32-4-104. Application of corporation law. The provisions of Title 35 shall apply to the corporation insofar as they may be applicable and not inconsistent with this chapter.

History: En. Sec. 18, Ch. 128, L. 1969; R.C.M. 1947, 15-2618.

Part 2

Organization

32-4-201. Incorporators — general powers — capital stock — articles of incorporation. Nine or more persons, a majority of whom shall be residents of this state, who desire to create a development corporation under the provisions of this chapter for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided may be incorporated in the following manner:

(1) The persons shall by articles of incorporation filed in the manner prescribed in Title 35, under their hands and seals, set forth:

(a) the name of the corporation, which shall include the words "Development Corporation of Montana";

(b) the location of the principal office of the corporation, but the corporation may have offices in other places within the state as may be fixed by the board of directors;

(c) the purposes for which the corporation is founded, which shall include the following:

(i) to elect, appoint, and employ officers, agents, and employees;

(ii) to make contracts and incur liabilities for any of the purposes of the corporation, provided that the corporation may not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association, or trust or in any other manner;

(iii) to borrow money from members, nonmember persons, firms, or corporations and state, federal, county, or municipal agencies or authorities for any of the purposes of the corporation; to issue for the purposes of the corporation its bonds, debentures, convertible debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the indebtedness by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part or interest in its property, franchises, rights, and privilege, without securing stockholder or member approval; provided that a loan to the corporation may not be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of the loans and in the same manner;

(iv) to make loans to any person, firm, corporation, joint-stock company, association, or trust and establish and regulate the terms and conditions with respect to any loans and the charges for interest and service connected with the loans; provided, however, that the corporation may not approve any application for a loan unless the person applying for the loan shows that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;

(v) to participate with any duly authorized private lending agency or city, county, state, or federal governmental lending agencies in the making of loans;

(vi) to purchase, receive, hold, lease, or otherwise acquire, except by condemnation, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with rights and privileges as may be incidental and appurtenant to the property and the use of the property, including but not restricted to any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(vii) to acquire the goodwill, business, rights, real and personal property, and other assets or any part or interest in the assets of any persons, firms, corporations, joint-stock companies, associations, or trusts and to assume, undertake, or pay the obligations, debts, and liabilities of any person, firm, corporation, joint-stock company, association, or trust;

(viii) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments or for the purpose of disposing of real estate to others for the construction of industrial plants or other business establishments;

(ix) to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(x) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint-stock company, association, or trust and while the owner or holder of interest for indebtedness exercise all the rights, powers, and privileges of ownership, including the right to vote;

(xi) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsections (1)(c)(vi) through (1)(c)(x) of this section, as security for the payment of any part of the purchase price of the property, right, or thing of value;

(xii) to cooperate with and avail itself of the facilities of the state planning and economic development divisions of the department of commerce and any similar governmental agencies and to cooperate with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of the communities or of this state or of any part of the state;

(xiii) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency or authority, whether state, federal, county, or municipal;

(xiv) to do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(d) the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(2) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 35, so far as consistent with this chapter.

History: En. Sec. 3, Ch. 128, L. 1969; amd. Sec. 34, Ch. 71, L. 1977; R.C.M. 1947, 15-2603; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 2, Ch. 320, L. 1983; amd. Sec. 2, Ch. 497, L. 1989.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Corporations — merger, consolidation, share exchange, and sale of assets, Title 35, ch. 1, part 8.

Development coordination — planning and economic development, Title 90, ch. 1, part 1.

32-4-202. Duration. The period of duration of the corporation shall be perpetual.

History: En. Sec. 15, Ch. 128, L. 1969; R.C.M. 1947, 15-2615.

32-4-203. Certificate of incorporation. Before the articles of incorporation shall become effective, the secretary of state must issue a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon, the persons signing the articles and their associates and their successors and assigns shall become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this chapter. The incorporators shall have the authority and shall perform such acts and things as required by the provisions of this chapter, as set forth in 32-4-201.

History: En. Sec. 4, Ch. 128, L. 1969; R.C.M. 1947, 15-2604.

32-4-204. Effect of failure to commence business. If a corporation organized pursuant to this chapter shall fail to begin business within 5 years from the effective date of its articles of incorporation, then said articles shall become null and void.

History: En. Sec. 16, Ch. 128, L. 1969; R.C.M. 1947, 15-2616.

32-4-205. Amendment of articles of incorporation. (1) The articles of incorporation may be amended by vote of the stockholders of the corporation and such amendments shall require approval by the affirmative vote of two-thirds of the stockholders, provided:

(a) that no amendment which is inconsistent with the general purposes expressed herein or which eliminates or curtails the obligation of the corporation to make reports as provided in 32-4-306 shall be made without amendment of this chapter; and

(b) that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation; makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation; or affects a member's right to withdraw from membership as provided in 32-4-303 shall be made without the consent of each member affected by such amendment.

(2) Within 30 days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the

president, treasurer, and a majority of the directors, setting forth such amendment and the due adoption thereof, shall so far as consistent with this chapter be submitted, as prescribed in Title 35, to the secretary of state who shall examine them. If he finds that they conform to the requirements of this chapter, he shall so certify and endorse his approval thereon. Thereupon, the amended articles of incorporation shall be filed in the office of the secretary of state, and no such amendment shall take effect until such amended articles of incorporation shall have been filed as aforesaid.

History: En. Sec. 5, Ch. 128, L. 1969; R.C.M. 1947, 15-2605; amd. Sec. 1, Ch. 91, L. 1987.

32-4-206. Board of directors. (1) The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and other officers and agents as the corporation by its bylaws shall authorize.

(2) The board of directors shall consist of a number, not less than nine, as determined in the first instance by the incorporators and thereafter annually by the stockholders of the corporation, provided that any state, county, or municipal agency or authority that has made a grant or loan to the corporation shall have at least one seat on the board of directors and additional seats representative of its proportional investment in the corporation.

(3) The directors need not be stockholders in the corporation.

(4) The board of directors may exercise all the powers of the corporation except as are conferred by law or by the bylaws of the corporation upon the stockholders and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director.

(5) The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation or, if no annual meeting is held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified, unless sooner removed in accordance with the provisions of the bylaws.

(6) Directors and officers are not responsible for losses unless the losses were occasioned by the willful misconduct of the directors and officers.

History: En. Sec. 6, Ch. 128, L. 1969; R.C.M. 1947, 15-2606; amd. Sec. 2, Ch. 91, L. 1987; amd. Sec. 3, Ch. 497, L. 1989.

32-4-207. First meeting of corporation. (1) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least 5 days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(2) At such first meeting the incorporators shall organize by the choice by ballot of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn

and shall make and attest a record of the proceedings. Five of the incorporators shall be a quorum for the transaction of business.

History: En. Sec. 8, Ch. 128, L. 1969; R.C.M. 1947, 15-2608.

32-4-208. Stock ownership and limitations. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) all persons, domestic corporations organized for the purpose of carrying on business within this state, including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the state, and trusts are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) all financial institutions are hereby authorized to become members of the corporation by making loans to the corporation as provided herein;

(3) a financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation;

(4) each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state.

History: En. Sec. 9, Ch. 128, L. 1969; R.C.M. 1947, 15-2609; amd. Sec. 3, Ch. 91, L. 1987.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Investments of financial institutions, 32-1-424.

Investments of building and loan associations, 32-2-406.

Investment of funds of credit unions, 32-3-701.

Shareholders, Title 35, ch. 1, part 5.

Shares, Title 35, ch. 1, part 6.

Part 3

Operation and Regulation

32-4-301. Powers of stockholders. (1) The stockholders of the corporation shall have the following powers of the corporation:

(a) to determine the number of and elect directors as provided in 32-4-206;

(b) to make, amend, and repeal bylaws;

(c) to amend the articles of incorporation as provided in 32-4-205;

(d) to exercise such other of the powers of the corporation as may be conferred on the stockholders by the bylaws.

(2) As to all matters requiring action by the stockholders of the corporation, and except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled.

(3) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him.

History: **En. Sec. 7, Ch. 128, L. 1969; R.C.M. 1947, 15-2607; amd. Sec. 4, Ch. 91, L. 1987.**

Cross-References

Shareholders, Title 35, ch. 1, part 5.

32-4-302. Membership — limitation and apportionment of loans by members. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this chapter. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed 10 times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) 20% of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding amounts validly called for loan but not yet loaned;

(b) the following limit, to be determined on the basis of the member's balance sheet at the close of its 1982 fiscal year and then redetermined periodically with the concurrence of the member:

(i) 3% of the capital and surplus of commercial banks and trust companies;

(ii) 1/4 of 1% of the total outstanding loans made by a building and loan association;

(iii) 2% of the capital and unassigned surplus of stock insurance companies; and

(iv) such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) The board of directors, on the request of any financial institution applying for membership and with the approval of one-half of the members that are the same type of financial institution as the applicant, may authorize a different loan limit than that set forth in subsection (3)(b).

(5) Subject to subsection (3)(a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(6) All loans to the corporation by a member shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest at a rate of not less than 1/4 of 1% in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the time.

History: En. Sec. 10, Ch. 128, L. 1969; R.C.M. 1947, 15-2610; amd. Sec. 3, Ch. 320, L. 1983; amd. Sec. 1, Ch. 90, L. 1985.

Cross-References

Interest rate limitation exemption — regulated lenders, 31-1-112.

Limitations on loans of banks, 32-1-432.

Limitation on loans of building and loan associations, 32-2-415.

Credit unions — membership defined, 32-3-304.

Credit unions — loans, 32-3-601 through 32-3-604.

Board of directors, 32-4-206.

32-4-303. Withdrawal of membership. (1) Membership in the corporation shall be for the duration of the corporation, provided that, upon written notice given to the corporation 2 years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

(2) A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of said member.

History: En. Sec. 11, Ch. 128, L. 1969; R.C.M. 1947, 15-2611.

Cross-References

Building and loan associations — stock withdrawal, 32-2-404.

Credit unions — members who leave field, 32-3-308.

Amendment of articles of incorporation, 32-4-205.

32-4-304. Surplus. Each year the corporation shall set apart as earned surplus not less than 10% of its net earnings for the preceding fiscal year until such surplus shall be equal in value to 50% of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

History: En. Sec. 12, Ch. 128, L. 1969; R.C.M. 1947, 15-2612; amd. Sec. 4, Ch. 320, L. 1983.

32-4-305. Deposit of funds. (1) The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

(2) The corporation shall not receive money on deposit.

History: En. Sec. 13, Ch. 128, L. 1969; R.C.M. 1947, 15-2613.

Cross-References

Board of directors, 32-4-206.

32-4-306. Control — supervision — reports. The corporation is subject to the examination of the department of commerce and shall make reports of its condition not less than annually to that department, which in turn shall make copies of the reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 35.

History: En. Sec. 14, Ch. 128, L. 1969; amd. Sec. 87, Ch. 431, L. 1975; R.C.M. 1947, 15-2614; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

Commissioner of Insurance — State Auditor as ex officio, 2-15-1903.

Amendment of articles of incorporation, 32-4-205.

Business corporations — annual reports, Title 35, ch. 1, part 11.

CHAPTER 5

CONSUMER LOAN BUSINESSES

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Chapter Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Credit Transactions and Relationships, Title 31.

Insurance premium finance companies, Title 33, ch. 14.

Part 1

General Provisions

Part Cross-References

Wage brokers, Title 31, ch. 1, part 3.

32-5-101. Short title. This chapter may be cited as the "Montana Consumer Loan Act".

History: En. Sec. 1, Ch. 283, L. 1959; R.C.M. 1947, 47-201.

Cross-References

Retail installment sales, Title 31, ch. 1, part 2.

32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a.

(2) "Consumer loan business" means the business of making consumer loans as a licensee under this chapter.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "License" means one or both of the licenses provided for by this chapter.

(5) "Licensee" means the person holding a license.

(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business.

History: En. Sec. 2, Ch. 283, L. 1959; amd. Sec. 1, Ch. 233, L. 1971; amd. Sec. 1, Ch. 172, L. 1975; amd. Sec. 110, Ch. 431, L. 1975; R.C.M. 1947, 47-202; amd. Sec. 1, Ch. 216, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 424, L. 1981; amd. Sec. 1, Ch. 140, L. 1983; amd. Sec. 1, Ch. 374, L. 1997.

Cross-References

Loan of money — what constitutes, 31-1-101.

32-5-103. Engaging in business of making consumer loans restricted. (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any charges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this chapter. The provisions of this chapter do not apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control,

or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any act by a licensee in the making of a contract or in the collection of a loan made under the contract that violates the provisions of this chapter is void. The licensee has no right to collect, receive, or retain any principal, interest, or charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter.

History: En. Sec. 4, Ch. 283, L. 1959; amd. Sec. 2, Ch. 233, L. 1971; amd. Sec. 2, Ch. 172, L. 1975; R.C.M. 1947, 47-204; amd. Sec. 2, Ch. 216, L. 1979; amd. Sec. 2, Ch. 424, L. 1981; amd. Sec. 1, Ch. 103, L. 1983; amd. Sec. 2, Ch. 140, L. 1983; amd. Sec. 1, Ch. 168, L. 1985; amd. Sec. 2, Ch. 406, L. 1985; amd. Sec. 1, Ch. 18, L. 1993; amd. Sec. 2, Ch. 374, L. 1997; amd. Sec. 1, Ch. 270, L. 1999; amd. Sec. 16, Ch. 404, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 270 in (1) in first sentence after "loans" deleted "or advances of money on credit" and in middle after "loan" deleted "or advance". Amendment effective October 1, 1999.

Chapter 404 in (1) deleted former second sentence that read: "A person engaged in business as a licensed pawnbroker may not become a licensee under this chapter"; and in (5) inserted third sentence regarding deferred deposit lender. Amendment effective October 1, 1999.

Cross-References

Assignment of wages to be considered loan, 31-1-308.

Interest pawnbrokers may receive, 31-1-401.

Banks and trust companies — limitations on loans, 32-1-432.

Building and loan associations — limitation on loans, 32-2-415.

Credit unions — loan limit, 32-3-603.

Development credit corporation — membership — limitation and apportionment of loans by members, 32-4-302.

32-5-104. Adjustment of dollar amounts. (1) From time to time the dollar amounts in this chapter designated as subject to change shall change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967 = 100, compiled by the bureau of labor statistics, department of labor, and hereafter referred to as the index. The index for December 1980 shall be the reference base index.

(2) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the reference base index is 10% or more, but:

(a) the portion of the percentage change in the index in excess of a multiple of 10% shall be disregarded and the dollar amounts shall change only in multiples of 10% of the amounts appearing in this chapter on October 1, 1981;

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this chapter as a result of earlier application of this section; and

(c) the dollar amounts may not be reduced below the amounts appearing in this chapter on October 1, 1981.

(3) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the United States bureau of labor statistics. If the index is superseded, the index referred to in this section shall be the one represented by the bureau of labor statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The department shall adopt a rule announcing:

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the index required by subsection (3) including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(5) A person does not violate this chapter with respect to a transaction otherwise complying with this chapter if he relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the department announcing the then current dollar amounts.

History: En. Sec. 9, Ch. 424, L. 1981.

Part 2

Licensure Requirements

32-5-201. License application and fees — supplementary license. (1) (a) A place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this chapter as to each license.

(b) Application for a license shall be on a form prescribed and furnished by the department.

(c) A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the department.

(d) With each application the applicant shall submit $50 as an investigation fee and $125 as a license fee. The license fee shall be returned to the applicant if the application is denied. The license year is the calendar year, and the license fee for any period less than 6 months is $62.50. A license remains in force until surrendered, suspended, or revoked.

(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than $1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of $1,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of $75 per calendar year or one-half of said sum for any period less than 6 months.

(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).

(c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.

(d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

(3) All moneys collected under the authority of this chapter shall be paid by the department into the state special revenue fund for the use of the department in its supervision function.

(4) The amount of $1,000 in subsection (2) is subject to change pursuant to the provisions of 32-5-104.

History: Ap. p. Sec. 6, Ch. 283, L. 1959; amd. Sec. 112, Ch. 431, L. 1975; Sec. 47-206, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-206; amd. Sec. 3, Ch. 216, L. 1979; amd. Sec. 3, Ch. 424, L. 1981; amd. Sec. 3, Ch. 140, L. 1983; amd. Sec. 6, Ch. 600, L. 1985.

Cross-References

State finance — fund structure, 17-2-102.

Discrimination in licensing prohibited, 49-3-204.

32-5-202. Issuance or denial of license. (1) Within 30 days after an application for license is filed with the department together with the required fees, the department shall issue the license, if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this chapter, or enter an order denying the license, if it finds to the contrary.

(2) A copy of the order granting or denying a license, together with a summary of the department's findings, shall be filed in the office of the department and shall be a public record. A copy of the order denying a license, together with a summary of the department's findings, shall be mailed postage prepaid to the applicant at the address stated in the application.

History: En. Sec. 7, Ch. 283, L. 1959; amd. Sec. 113, Ch. 431, L. 1975; R.C.M. 1947, 47-207.

Cross-References

Discrimination in licensing prohibited, 49-3-204.

32-5-203. Conduct of other business in same office. A licensee may conduct the business of making consumer loans under this chapter within any office, room, or place of business in which any other business for which a license under this chapter is not required is solicited or engaged in or in association or conjunction with the business. "Other business" may include making loans not primarily for personal, family, or household purposes, unless the department finds, after a hearing, that the other business is of a nature that the conduct tends to conceal evasion of this chapter or of the rules made under this chapter. If the department finds concealment or evasion, it shall order the licensee in writing to desist from the conduct.

History: En. Sec. 8, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-208; amd. Sec. 3, Ch. 374, L. 1997.

Cross-References

Wage brokers, Title 31, ch. 1, part 3.

Pawnbrokers, Title 31, ch. 1, part 4.

32-5-204. License renewal fee. Every licensee shall, on or before December 1, pay to the department the sum of $125 for each license held as a license fee for the succeeding calendar year. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

History: En. Sec. 9, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 35, Ch. 71, L. 1977; R.C.M. 1947, 47-209.

32-5-205. Surrender of license. Any licensee may surrender any license by delivering it to the department with written notice thereon, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

History: En. Sec. 21, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-221.

32-5-206. Termination of license not to affect preexisting contract. No revocation, surrender, or expiration of any license shall impair or affect the obligation of any preexisting lawful contract.

History: En. Sec. 22, Ch. 283, L. 1959; R.C.M. 1947, 47-222.

Cross-References

Contracts in general, Title 28, ch. 2, 3.

32-5-207. Revocation and suspension of license. The department, upon 10 days' written notice to the licensee and statement of the grounds and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend for not more than 30 days or revoke a license if it finds the licensee has knowingly violated any provision of this chapter. When the department enters an order revoking or suspending a license, it shall mail a copy of the order by certified or registered mail to the licensee at the address for which the license was issued.

History: En. Sec. 23, Ch. 283, L. 1959; amd. Sec. 116, Ch. 431, L. 1975; R.C.M. 1947, 47-223.

Cross-References

Department — powers and duties, 32-5-401.

32-5-208. Reinstatement. The department may reinstate any suspended or revoked license if no fact or condition then exists which clearly would have justified the department in refusing originally to issue such license. In any case where the license has been revoked for cause, no application shall be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

History: En. Sec. 24, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-224.

Cross-References

Department — powers and duties, 32-5-401.

Part 3

Operation of Business — Restrictions and Requirements

32-5-301. Charges, refunds, penalties, filing fees. (1) A licensee or holder of a supplementary license under this part may contract for and receive on any loan of money interest charges as provided under 31-1-112.

(2) Charges in subsection (1) must be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. The charges must be added to the principal of the loan and may not be discounted or deducted from the principal or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final

installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit must be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge that would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and that amount may be charged only once.

(5) (a) The licensee may include in the principal amount of any loan:

(i) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan; or

(ii) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(6) Further or other charges may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee may not collect or receive any charges.

(7) Subsections (2), (3), and (6) of this section apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis.

(8) If a consumer loan is prepaid in whole or in part for any reason, including after a default, prior to the final payment due date and the amount of prepayment exceeds 10% of the then-outstanding principal balance of the loan, a licensee may charge a prepayment charge as follows:

(a) 10% of the then-outstanding principal balance of the loan if the prepayment occurs during the first 6 months after the date of the loan;

(b) 7% of the then-outstanding principal balance of the loan if the prepayment occurs more than 6 months after the date of the loan, but on or before 18 months after the date of the loan; or

(c) 3.5% of the then-outstanding principal balance of the loan if the prepayment occurs more than 18 months after the date of the loan, but before 61 months after the date of the loan.

(9) A prepayment charge may not be collected if:

(a) the prepayment results solely because of the enforcement of a "due on sale" clause in a real estate mortgage or deed of trust that secures the loan;

(b) the loan provided is prepaid by another loan made by the same licensee or an affiliate of the licensee; or

(c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance policy.

History: Ap. p. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965; Sec. 47-210, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-210; amd. Sec. 6, Ch. 216, L. 1979; amd. Sec. 4, Ch. 424, L. 1981; amd. Sec. 2, Ch. 135, L. 1983; amd. Sec. 4, Ch. 140, L. 1983; amd. Sec. 2, Ch. 168, L. 1985; amd. Sec. 3, Ch. 406, L. 1985; amd. Sec. 3, Ch. 198, L. 1993; amd. Sec. 2, Ch. 270, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 270 inserted (8) outlining guidelines for prepayment charges on consumer loans; inserted (9) outlining when prepayment charge may not be collected; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Penalty for usury — action to recover excessive interest, 31-1-108.

Limitation of Rule of 78ths, 31-1-113.

Finance charge limitation, 31-1-241.

License application and fees, 32-5-201.

Penalties, 32-5-406.

32-5-302. Installment payment — contract period. (1) A licensee may not enter into any contract of loan:

(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making the contract;

(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or

(c) for more than $1,000 to and including $2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 48 calendar months from the date of making.

(2) Each loan contract requires payment of principal and charges in installments that are payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. With respect to a loan on which charges are made on an add-on basis, an installment contracted for may not be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for

the number of days in excess of 30 from the date of making may be added to the scheduled amount of the installments.

History: En. Sec. 11, Ch. 283, L. 1959; amd. Sec. 4, Ch. 233, L. 1971; amd. Sec. 36, Ch. 71, L. 1977; R.C.M. 1947, 47-211; amd. Sec. 5, Ch. 424, L. 1981; amd. Sec. 1, Ch. 150, L. 1991; amd. Sec. 4, Ch. 198, L. 1993; amd. Sec. 4, Ch. 374, L. 1997.

Cross-References

Contracts — time of performance, Title 28, ch. 3, part 6.

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

32-5-303. Borrower to receive copy of contract or statement of contents. At the time the loan is made, there will be delivered to the borrower, or if there be two or more borrowers to one of them, the disclosures required by the Federal Consumer Credit Protection Act, a copy of the loan contract, or a written statement in the English language showing in clear and distinct terms:

(1) the name and address of the lender and of one of the borrowers or a maker of the loan;

(2) the date of the loan contract;

(3) the schedule of installments or description thereof;

(4) the principal amount of the loan excluding charges;

(5) the rate or amount of charges as the contract may provide;

(6) the amount collected or paid out for each kind of insurance, if any;

(7) the amount collected or paid out for filing and other fees as allowed in 32-5-301(5);

(8) the collateral or security for the loan including all other accommodation or other joint makers (comakers);

(9) that the borrower may prepay the loan in whole or in part at any time during a licensee's regular business hours and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of 32-5-301(3) if such loan is prepaid in full.

History: En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part); amd. Sec. 6, Ch. 424, L. 1981; amd. Sec. 4, Ch. 406, L. 1985.

Cross-References

Requirements of retail installment contracts, 31-1-231.

32-5-304. Receipts — return of note. Every licensee shall:

(1) give to the borrower a plain and complete receipt in a form approved by the department for every payment made in cash on account of any loan at the time such payment is made;

(2) endorse indelibly on a loan ledger or card, which shall be kept by the licensee, the amount and date of each payment made by the borrower. Subject to the prior written approval of the department, mechanical data processing methods may be used. The department may approve any such system containing information equivalent to that required on a loan ledger or card.

(3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled" and release any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee within 10 days after such repayment. Such canceled notes and canceled assignments shall be mailed to the borrower at his last known address unless returned to the borrower in person.

History: En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part); amd. Sec. 1, Ch. 84, L. 1981.

Cross-References

Notice and receipt of payment, 31-1-236.

32-5-305. Confessions of judgment — incomplete instruments forbidden. No licensee shall:

(1) take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding;

(2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description thereof, and the agreed charges and in which blanks are left to be filled in after execution. However, such details need not appear on a certificate of title to a motor vehicle, a policy or certificate of insurance, a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located, or customary powers in connection with bonds or stocks which may be pledged as collateral; or

(3) take any instrument in which blanks are left to be filled in after the loan is made.

History: En. Sec. 13, Ch. 283, L. 1959; R.C.M. 1947, 47-213.

Cross-References

Confession of judgment, Title 27, ch. 9.

Requirements of retail installment contracts, 31-1-231.

32-5-306. Insurance. (1) Except as provided in this section, insurance may not be written by a licensee or employee, affiliate, or associate of the licensee, in connection with any loan.

(2) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct business in Montana by a duly licensed agent or agency of this state. Premiums may not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) When the principal amount of the loan exceeds $300 exclusive of the portion of the loan attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain insurance in an amount greater than the amount of the loan or for a longer term.

(4) Subject to the laws of this state, credit life insurance, credit disability insurance, and loss of income insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds $300, exclusive of the portion of the loan attributable to insurance premiums and charges.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that a licensee may not require a borrower to purchase insurance from the licensee or from any particular agent, broker, or insurance company as a condition precedent for obtaining a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as

authorized by this section may not be considered to be additional charges or a violation of this chapter.

(6) A licensee may not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

(7) The amount of $300 in subsections (3) and (4) is subject to change pursuant to 32-5-104 on adjustment of dollar amounts.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965; amd. Sec. 5, Ch. 233, L. 1971; amd. Sec. 4, Ch. 172, L. 1975; R.C.M. 1947, 47-214; amd. Sec. 4, Ch. 216, L. 1979; amd. Sec. 7, Ch. 424, L. 1981; amd. Sec. 5, Ch. 140, L. 1983; amd. Sec. 1, Ch. 193, L. 1989.

Cross-References

Retail installment contracts — insurance, 31-1-233.

Insurance, Title 33.

Credit life and disability insurance, Title 33, ch. 21.

32-5-307. Records to be kept. Each licensee shall keep or make available in each licensed office the books, accounts, and records that the department requires and that are necessary to enable the department to determine whether the licensee is complying with this chapter and with the rules promulgated under this chapter. The licensee shall preserve the records for at least 2 years after making the final entry on any loan recorded in the records.

History: En. Sec. 17, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-217; amd. Sec. 5, Ch. 374, L. 1997.

Cross-References

Department — powers and duties — adoption of rules, 32-5-401.

Access to records — witnesses, 32-5-404.

32-5-308. Annual report. (1) A licensee shall annually before April 15 file a report for the preceding calendar year with the department.

(2) The report shall give information with respect to the financial condition of the licensee and shall include:

(a) the name and address of the licensee;

(b) balance sheets at the beginning and end of the calendar year;

(c) a statement of income and expenses;

(d) a reconciliation of surplus or net earnings with the balance sheets;

(e) a schedule of assets used in the consumer loan business;

(f) an analysis of charges, size of loans made, and types of security on loans;

(g) an analysis of suits and foreclosures; and

(h) other relevant information the department may reasonably require concerning the business during the preceding calendar year of each licensed place of business conducted by the licensee in this state.

(3) The report shall be made under oath and be in a form prescribed by the department, which shall publish annually an analysis and summary of the reports.

History: En. Sec. 18, Ch. 283, L. 1959; amd. Sec. 115, Ch. 431, L. 1975; R.C.M. 1947, 47-218.

Cross-References

Annual examinations — cost, 32-5-403.

32-5-309. Advertising — limitations. No person shall advertise, display, distribute, broadcast, or televise or permit to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of loans.

History: En. Sec. 19, Ch. 283, L. 1959; R.C.M. 1947, 47-219.

Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

When advertising as bank prohibited, 32-1-402.

32-5-310. Wage assignments — limitations. (1) The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this chapter, be considered a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this chapter, be considered interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transactions shall be governed by and be subject to the provisions of this chapter.

(2) Any assignment or other transfer to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services must be limited to not exceeding 10% of such salary, wages, commissions, or other compensation owing at the time of the notice to the debtor's employer and thereafter to become owing. However, no such assignment or order is valid unless it is in writing, signed in person by the borrower or if the borrower is married, unless it is signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when such assignment or order is made. Only if the debtor defaults in payment of the whole or some part of the loan for which such assignment or transfer is security shall notice be given to the debtor's employer of such assignment or transfer. Such notice must be served on the employer or a managing agent of such employer, must be verified by the oath of the licensee or his agent, and must include:

(a) a correct copy of the assignment;

(b) a statement of the amount of such loan and the amount due and unpaid thereon;

(c) a copy of this section.

(3) The acceptance and honoring of any assignment shall be at the option of the employer.

History: En. Sec. 20, Ch. 283, L. 1959; amd. Sec. 37, Ch. 71, L. 1977; R.C.M. 1947, 47-220.

Cross-References

Wage brokers, Title 31, ch. 1, part 3.

32-5-311 through 32-5-320 reserved.

32-5-321. Deferral charge permitted — nature of deferral charge. Notwithstanding the provisions of 32-5-301 and 32-5-302, if the contract so provides, a consumer loan licensee may, at any time, grant a deferral and make deferral charges as provided in 32-5-322. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the deferral period. The deferral period is that period during which no installment is scheduled to be paid by reason of the deferral.

History: En. Sec. 1, Ch. 341, L. 1979.

Cross-References

Retail installment sales — delinquency fee, 31-1-235.

32-5-322. Deferral charge — rate. The deferral charge for a 1-month period may not exceed an amount equal to the difference between the refund which would be required for prepayment in full under 32-5-301(3) as of the scheduled due date of the first deferred installment and the refund which would be required for prepayment in full as of 1 month prior to such date. A proportionate charge may be made for deferrals for periods of more or less than 1 month. A deferral charge is earned pro rata on a daily basis during the deferral period and is fully earned on the last day of the deferral period. Should a loan be prepaid during a deferral period the licensee shall make or credit to the borrower a pro rata refund of the unearned deferral charge in addition to any refund or credit made pursuant to 32-5-301(3).

History: En. Sec. 2, Ch. 341, L. 1979; amd. Sec. 3, Ch. 168, L. 1985; amd. Sec. 5, Ch. 406, L. 1985.

Cross-References

Retail installment sales — delinquency fee, 31-1-235.

32-5-323. Deferral prohibited when default charge has been collected. No installment payment upon which a default charge has been collected may be deferred unless the default charge is refunded to the borrower or credited to the deferral charge.

History: En. Sec. 3, Ch. 341, L. 1979.

32-5-324. Collection of deferral charge. A deferral charge may be collected at the time it accrues or any time thereafter.

History: En. Sec. 4, Ch. 341, L. 1979.

Cross-References

Retail installment sales — delinquency fee, 31-1-235.

Part 4

Enforcement

32-5-401. Department — powers and duties — adoption of rules. (1) All powers and duties of regulation and supervision conferred by this chapter are vested in the department. The department shall adopt rules necessary to carry out the intent and purposes of this chapter. A copy of every rule shall be mailed to each licensee at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of a rule does not exempt him from complying with a rule adopted under this chapter.

(2) All rules adopted under this chapter are binding on all licensees and enforceable by the department through the power of suspension or revocation of licenses.

History: En. Sec. 3, Ch. 283, L. 1959; amd. Sec. 111, Ch. 431, L. 1975; R.C.M. 1947, 47-203.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Revocation and suspension of license, 32-5-207.

32-5-402. Investigations. The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

(1) a licensee; or

(2) a person whom the department has reason to believe is violating or is about to violate this chapter.

History: En. Sec. 15, Ch. 283, L. 1959; amd. Sec. 6, Ch. 233, L. 1971; amd. Sec. 5, Ch. 172, L. 1975; amd. Sec. 114, Ch. 431, L. 1975; R.C.M. 1947, 47-215; amd. Sec. 5, Ch. 216, L. 1979; amd. Sec. 8, Ch. 424, L. 1981; amd. Sec. 6, Ch. 140, L. 1983.

Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973 — investigative authority, 30-14-114.

Records to be kept, 32-5-307.

Advertising — limitations, 32-5-309.

32-5-403. Annual examinations — cost. (1) The department shall make an annual examination of the books, accounts, and records of every licensee insofar as they relate to transactions with borrowers under this chapter and may make such additional examinations as the department deems necessary.

(2) The expenses of the department incurred in the examination of the books and records of the licensees shall be charged at a rate to be established by the department by rule. Such fees shall be established to recover all of the costs of the supervision program of the department. Each licensee shall be billed by the department for the amount so charged to such licensee. If said charge is not paid within 30 days after the mailing of such bill, the license of said licensee may be suspended or revoked.

History: En. Sec. 16, Ch. 283, L. 1959; amd. Sec. 7, Ch. 233, L. 1971; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-216; amd. Sec. 1, Ch. 368, L. 1983; amd. Sec. 7, Ch. 600, L. 1985.

Cross-References

Banks — examination and supervision by Department, 32-1-211.

Building and loan associations — examinations by Department, 32-2-301.

Credits unions — examinations, 32-3-203.

Annual report, 32-5-308.

32-5-404. Access to records — witnesses. For the purpose of this chapter the department or its duly authorized representatives shall be given free access to the offices and places of business, files, safes, and vaults of all such persons and may require the attendance of any person and examine him under oath relative to such loans or such business or to the subject matter of any examination, investigation, or hearing and may require the production of books, accounts, papers, and records. In the event of disobedience to any subpoena or other process issued by the department or failure to produce any books, accounts, papers, and records, the department may invoke the aid of any district court of this state in requiring the evidence and testimony of witnesses and the production of books, accounts, papers, and records.

History: En. Sec. 26, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 38, Ch. 71, L. 1977; R.C.M. 1947, 47-226.

Cross-References

Production of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Montana Unfair Trade Practices and Consumer Protection Act of 1973 — Department authority, 30-14-114.

Unfair trade practices — investigations, 30-14-221.

32-5-405. Injunctions — receivers. (1) Whenever the department has reasonable cause to believe that any person is violating or is threatening to violate any provision of this chapter, the department may, in addition to all actions provided for in this chapter and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation.

(2) An action may be brought on the relation of the attorney general and the department to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

(3) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court.

History: En. Sec. 27, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-227.

Cross-References

Appointment of receiver, Title 25, ch. 14, part 2.

Injunctions, Title 27, ch. 19.

Receivers, Title 27, ch. 20.

32-5-406. Penalties. (1) Any person who shall contract for or receive interest or charges on any bond, bill, promissory note, or other instrument of writing at a rate exceeding the maximum amount authorized by this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person who, by any device, subterfuge, or pretense whatsoever, shall engage in any transaction permitted only to licensees under the provisions of the chapter without first having obtained a license as herein required shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 28, Ch. 283, L. 1959; R.C.M. 1947, 47-228.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14, parts 1 and 2.

Penalty for usury — action to recover excessive interest, 31-1-108.

Charges, refunds, penalties, and filing fees, 32-5-301.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-5-407. Attorney fees — bad check charge. (1) If the contract so provides, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other charges authorized by this chapter, a licensee may charge a borrower the greater of $25 or the licensee's actual expense for each check, received in payment of a loan, that is dishonored for any reason.

History: En. Sec. 10, Ch. 424, L. 1981; amd. Sec. 4, Ch. 168, L. 1985; amd. Sec. 3, Ch. 270, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 270 in (2) increased maximum bad check charge from $10 to $25. Amendment effective October 1, 1999.

Cross-References

Contractual right to attorney fees treated as reciprocal, 28-3-704.

Part 5

Open-End Loans

32-5-501. Open-end loans. (1) A holder of a supplementary license may make open-end loans and may contract for and receive charges, as allowed under 31-1-112, on unpaid balances outstanding from time to time for the actual time outstanding.

(2) A holder of a supplementary license may not compound charges by adding any unpaid charges authorized by this section to the unpaid principal balance of the borrower's account; however, the unpaid principal balance may include the fees paid to third parties as authorized by 32-5-504 and by 32-5-301(5).

History: En. Sec. 1, Ch. 218, L. 1981; amd. Sec. 7, Ch. 140, L. 1983; amd. Sec. 5, Ch. 168, L. 1985; amd. Sec. 6, Ch. 406, L. 1985.

32-5-502. Computation of charges. (1) Charges authorized by this part shall be computed in each billing cycle by any of the following methods:

(a) by converting the monthly rate to a daily rate and multiplying such daily rate by the daily unpaid principal balance of the account; or

(b) by multiplying the monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) by multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle.

(2) For purposes of this part, "billing cycle" means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than 4 days from such date.

(3) For all of the above methods of computation, the billing cycle shall be monthly and the unpaid principal balance on any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

History: En. Sec. 2, Ch. 218, L. 1981.

32-5-503. Early payment. The borrower may at any time pay all or any part of the unpaid balance in the borrower's account, or if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments, subject to minimum payment requirements as determined by the licensee and set forth in the open-end loan agreement. With respect to a loan on which charges are made on an add-on basis, minimum monthly payments must be made in an amount that would result in the full repayment of the initial loan advance, exclusive of any charges, within the maximum term set forth for other loans of the same amount in 32-5-302(1).

History: En. Sec. 3, Ch. 218, L. 1981; amd. Sec. 6, Ch. 374, L. 1997.

32-5-504. Additional charges. In addition to the charges permitted under 32-5-501, a holder of a supplementary license may contract for and receive the fees, costs, and expenses permitted by this chapter on other loans, subject to all the conditions and restrictions set forth in the applicable provisions of this chapter with the following variations:

(1) If credit life or disability insurance is provided and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the insurance must be sufficient to pay, in the case of credit life insurance, the total balance of the loan due on the date of the borrower's death or, in the case of credit disability insurance, all minimum payments that become due on the loan during the covered period of disability. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance, as such rate may be determined

by the commissioner of insurance, to the unpaid balances in the borrower's account, using either of the methods specified in 32-5-502 for the calculation of loan charges.

(2) The amount, terms, and conditions of any insurance against loss or damage to property must be reasonable in relation to the character and value of the property insured and the maximum anticipated amount of credit to be extended.

History: En. Sec. 4, Ch. 218, L. 1981.

Cross-References

Credit life and disability insurance, Title 33, ch. 21.

32-5-505. Security. A holder of a supplementary license may take a security interest in personal property to secure an open-end loan and may retain the security interest until the open-end account is terminated. A holder of a supplementary license may take a security interest in real property to secure an open-end loan and may retain the security interest until the open-end account is terminated. However, if there is no outstanding balance in the account and there is no commitment by the licensee to make additional advances, the licensee shall, within 30 days following written request by the borrower, deliver to the borrower a release of the mortgage or a request for reconveyance of the deed of trust or trust indenture on any real property taken as security for a loan.

History: En. Sec. 5, Ch. 218, L. 1981; amd. Sec. 7, Ch. 374, L. 1997.

Cross-References

Secured transactions, Title 30, ch. 9.

32-5-506. Provisions not applicable. The provisions of 32-5-301(3) and the provisions of 32-5-304 do not apply to open-end loans.

History: En. Sec. 6, Ch. 218, L. 1981; amd. Sec. 6, Ch. 168, L. 1985; amd. Sec. 7, Ch. 406, L. 1985; amd. Sec. 4, Ch. 270, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 270 substituted "32-5-301(3)" for "subsections (3) and (4) of 32-5-301". Amendment effective October 1, 1999.

CHAPTER 6

ELECTRONIC FUNDS TRANSFER ACT

Part 1 — General Provisions

32-6-101. Short title.
32-6-102. Electronic funds transfer systems — applicability.
32-6-103. Definitions.
32-6-104. Consumer information.
32-6-105. Protection of privacy.
32-6-106. Unauthorized disclosure of electronic funds transfer records.

Part 2 — Satellite Terminals (Repealed. Sec. 16, Ch. 265, L. 1995)

Part 3 — Operation

32-6-301. Records of electronic funds transfers.
32-6-302. Verification of statement — procedure for discrepancies.
32-6-303. Unauthorized transactions — liability.
32-6-304. Repealed.
32-6-305. Repealed.
32-6-306. Personal identification number — restrictions.
32-6-307. Repealed.
32-6-308. Repealed.
32-6-309. Repealed.

Part 4 — Regulation and Enforcement
(Repealed. Sec. 17, Ch. 117, L. 1997)

Part 1
General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

Uniform Commercial Code — funds transfers, Title 30, ch. 4A.

U.C.C. — funds transfers — exclusion of consumer transactions governed by federal law, 30-4A-108.

Credit Transactions and Relationships, Title 31.

32-6-101. Short title. This chapter shall be known and may be cited as the "Montana Electronic Funds Transfer Act".

History: En. 5-1701 by Sec. 1, Ch. 503, L. 1977; R.C.M. 1947, 5-1701.

32-6-102. Electronic funds transfer systems — applicability. The legislature has determined that electronic funds transfer systems are technologies offered by all types of financial depository institutions. These technologies provide the consumer with both convenience and efficiency in making financial transactions. Regulation E of the federal Electronic Fund Transfer Act (15 U.S.C. 1693, et seq.) addresses many of the consumer issues relating to these systems. This chapter applies to financial institutions chartered under the United States Code or Title 32, chapter 1, parts 1 through 5, to the extent that those laws permit.

History: En. 5-1702 by Sec. 2, Ch. 503, L. 1977; R.C.M. 1947, 5-1702; amd. Sec. 12, Ch. 265, L. 1995; amd. Sec. 141, Ch. 42, L. 1997.

Cross-References

U.C.C. — funds transfers — subject matter, 30-4A-102.

National bank powers extended to state banks, 32-1-362.

Consolidation or merger of banks, 32-1-371.

Branch bank prohibited — exceptions, 32-1-372.

Financial institutions — exemption from regulation of escrow business, 32-7-103.

32-6-103. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(2) "Department" means the department of commerce.

(3) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes but is not limited to point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It also includes a transfer resulting from a debit card transaction, including a transaction that does not involve an electronic terminal at the time of the transaction. The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal.

(4) "Electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic funds

transfer. The term includes but is not limited to point-of-sale terminals, automated teller machines, and cash dispensing machines.

(5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer loan company licensed under chapter 5 is considered a financial institution.

(6) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(7) "Person" means an individual, partnership, corporation, association, or any other business organization.

(8) "Premises" means those locations where, by applicable law, financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses. The term includes a detached drive-in or walk-up facility approved under 32-1-372.

(9) (a) "Satellite terminal" means any machine or device that is located off the premises of a financial institution and that a financial institution or its customers may use to carry out electronic funds transfers.

(b) Satellite terminal includes:

(i) an automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, and activated by a unique identification device and personal identification number;

(ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a customer, a merchant, or the merchant's employees solely to debit or credit a customer's deposit or share account in a financial institution and solely to credit or debit the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, if the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of satellite terminal does not include and nothing in this chapter may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal that is used by a merchant in the merchant's business only and does not provide access to a financial institution.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device that contains either a number or a dollar balance, or both, that is unique to a customer and that is issued by a financial institution, merchant, or other person.

History: En. 5-1703 by Sec. 3, Ch. 503, L. 1977; R.C.M. 1947, 5-1703; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 255, L. 1989; amd. Sec. 13, Ch. 265, L. 1995.

Cross-References

U.C.C. — funds transfers — funds transfer — definitions, 30-4A-104.

32-6-104. Consumer information. (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer with an itemized statement clearly setting forth, without limitation:

(a) the specific transactions that may be performed through satellite terminals;

(b) the charges, if any, for individual transactions made through a satellite terminal;

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes a personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of theft or loss;

(e) the legal status of receipts issued from a satellite terminal;

(f) the right of the customer to a description of transactions performed by satellite terminal on any periodic statement of account furnished the customer;

(g) the right of the customer to seek correction of an error that the customer believes has been made in the customer's account by electronic funds transfer;

(h) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(i) the economic significance of having no "float" time and no stop-payment authority.

(2) The customer shall then sign a statement acknowledging acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, must be provided to the customer. In addition, the information set forth in subsection (1)(d) must be specifically acknowledged by the customer. The customer shall verify acknowledgement by signing the customer's initials immediately adjacent to the information provided.

(3) The owner of an electronic terminal may impose a surcharge for the use of its electronic terminal. The owner of an electronic terminal that elects to impose a surcharge for the use of its electronic terminal shall clearly advise the user of the electronic terminal, by a conspicuous disclosure on the terminal or through a message displayed on the electronic terminal screen, of the exact amount of the surcharge. The user must then be provided the option either to cancel the transaction, without incurring the surcharge, or to complete the transaction subject to the surcharge.

(4) A merchant or person other than a financial institution that issues a unique identification device to its customers for use at a point-of-sale terminal and that provides to the holders of the unique identification device a disclosure that satisfies the initial disclosures of terms and conditions under Regulation E of the federal Electronic Fund Transfer Act is considered to be in compliance with the disclosure requirements of this section.

History: En. 5-1706 by Sec. 6, Ch. 503, L. 1977; R.C.M. 1947, 5-1706; amd. Sec. 2, Ch. 255, L. 1989; amd. Sec. 14, Ch. 265, L. 1995.

Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

Unauthorized transactions — liability, 32-6-303.

32-6-105. Protection of privacy. (1) No information relating to any transaction by electronic funds transfer, or application therefor, between a financial institution and its customer or prospective customer may be disclosed by the financial institution to any person or government entity without:

(a) the consent of the customer; or

(b) a subpoena issued by a court of record directing the financial institution to disclose such information to the person or government entity.

(2) Compliance with such subpoena relieves a financial institution and its employees of liability to a customer or other person for such disclosure.

(3) This section does not prevent:

(a) the examination of financial institutions by duly authorized regulatory authority or the transfer of information by a financial institution to a clearinghouse which administers transactions between financial institutions; or

(b) the access by a party to a transaction to information relating to a specific transaction.

History: En. 5-1709 by Sec. 9, Ch. 503, L. 1977; R.C.M. 1947, 5-1709; amd. Sec. 1, Ch. 186, L. 1987.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Civil subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Evidence — subpoenas, Title 26, ch. 2, part 1.

U.C.C. — funds transfers — security procedure, 30-4A-201.

Investigative subpoenas, Title 46, ch. 4, part 3.

Criminal subpoenas, Title 46, ch. 15, part 1.

32-6-106. Unauthorized disclosure of electronic funds transfer records. (1) A person commits the offense of unauthorized disclosure of electronic funds transfer records if he has lawful access to such records by virtue of office or employment:

(a) and permits another, who lacks lawful access to such records, to inspect, copy, or read such records; or

(b) transfers such records to another who lacks lawful access thereto.

(2) A person convicted of the offense of unauthorized disclosure of electronic funds transfer records shall be imprisoned in the state prison for any term not to exceed 1 year, be fined not more than $5,000, or be punished by both such imprisonment and fine.

History: En. 5-1710 by Sec. 10, Ch. 503, L. 1977; R.C.M. 1947, 5-1710.

Cross-References

U.C.C. — funds transfers — security procedure, 30-4A-201.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Part 2

Satellite Terminals
(Repealed. Sec. 16, Ch. 265, L. 1995)

Part Compiler's Comments

Histories of Repealed Sections:

32-6-201. En. 5-1704 by Sec. 4, Ch. 503, L. 1977; R.C.M. 1947, 5-1704.

32-6-202. En. 5-1705 by Sec. 5, Ch. 503, L. 1977; R.C.M. 1947, 5-1705; amd. Sec. 6, Ch. 322, L. 1989.

32-6-203. En. 5-1707 by Sec. 7, Ch. 503, L. 1977; R.C.M. 1947, 5-1707; amd. Sec. 1, Ch. 205, L. 1983.

32-6-204. En. 5-1708 by Sec. 8, Ch. 503, L. 1977; R.C.M. 1947, 5-1708; amd. Sec. 2, Ch. 205, L. 1983; amd. Sec. 1, Ch. 238, L. 1985; amd. Sec. 7, Ch. 322, L. 1989.

Part 3
Operation

Part Cross-References

Uniform Commercial Code — funds transfers, Title 30, ch. 4A.

U.C.C. — funds transfers — transfer through funds-transfer system, 30-4A-206.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

32-6-301. Records of electronic funds transfers. (1) A satellite terminal must be operated to produce a humanly readable record of any transaction and to provide a copy of this record to the person initiating the transaction as soon as the transaction is complete.

(2) The receipt provided to the person initiating an electronic funds transfer is admissible as evidence in any legal proceeding and constitutes prima facie proof of the transaction that it records.

(3) (a) A financial institution shall provide each of its customers using electronic funds transfer services with a periodic account statement containing a brief description of all electronic funds transfers sufficient to enable the customer to identify any transaction and relate the transaction to the receipt provided under subsection (1).

(b) The periodic account statement description of automated teller machine transactions must include a specific geographic location where each transaction occurred.

(c) When a periodic account statement includes both electronic funds transfers and other transactions, all electronic funds transfers must be identified as such and be furnished in compliance with this subsection (3).

History: En. 5-1711 by Sec. 11, Ch. 503, L. 1977; R.C.M. 1947, 5-1711; amd. Sec. 15, Ch. 265, L. 1995.

Cross-References

Reproduction of bank records — admissibility in evidence, 32-1-492.

Admissibility of copies in evidence — exception when original available, 32-1-493.

Protection of privacy, 32-6-105.

Unauthorized disclosure of electronic funds transfer records, 32-6-106.

32-6-302. Verification of statement — procedure for discrepancies. (1) If, upon receipt of a periodic statement of account, a customer of a financial institution believes the statement contains an error with respect to an electronic funds transfer, the customer shall notify the institution within 60 days after the day the institution delivered the statement. In this notification, the customer shall identify himself and the foundation of his belief regarding the error.

(2) Within 10 days after a customer has notified a financial institution of a possible error under subsection (1), the institution shall either:

(a) correct the account in question, giving the customer a description of the correction (if the correction is not in the exact amount of the alleged error, the description shall explain the difference); or

(b) after investigating the matter, give the customer an explanation of the reasons the institution believes the statement to be correct. If requested in writing by the customer, a written explanation, documented by the institution's record of the transaction in question, shall be furnished the customer.

(3) A financial institution receiving notice under subsection (1) may not close the account concerning which the dispute exists or restrict transactions in such account affecting the portion not in dispute until it complies with subsection (2). A financial institution which has once complied with subsection (2) with respect to an alleged error is not required to respond under subsection (2) to repeated allegations of the same error.

History: En. 5-1712 by Sec. 12, Ch. 503, L. 1977; R.C.M. 1947, 5-1712.

32-6-303. Unauthorized transactions — liability. (1) A customer whose account is debited by an electronic funds transfer without his authorization is not liable for the amount of such transaction, and the amount must be recredited to his account as provided under 32-6-302, unless:

(a) the financial institution has provided the customer a unique identification device for initiating electronic funds transfer requests and transactions are made as a result of the theft or loss of that device, in which case the customer is liable for the first $50 of any consequent transactions made prior to the time the financial institution is notified of the loss or theft; or

(b) the financial institution has provided the customer a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests and the customer attaches the personal identification number to the device by writing or otherwise or in any way makes the number readily available for discovery in connection with the theft or loss of the device and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of the theft or loss.

(2) A customer who willingly gives his unique identification device and personal identification number to another is presumed to have authorized any electronic funds transfers requested by the other person.

(3) A merchant who makes electronic funds transfer services available on his premises is liable for the amount of an unauthorized electronic funds transfer requested from his premises only if:

(a) he or his agent is negligent in requiring a user of electronic funds transfer services to furnish adequate self-identification;

(b) he fails to retain a physical record of the transaction for 1 year following the transaction; or

(c) he breaches the warranty required by subsection (4).

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution or the department that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in which the customer receives goods or services of commensurate value.

(5) The liability for any unauthorized or erroneous electronic funds transfer that does not fall upon a customer or a merchant under this section falls upon the financial institution that carries out the transfer.

History: En. 5-1713 by Sec. 13, Ch. 503, L. 1977; R.C.M. 1947, 5-1713; amd. Sec. 3, Ch. 255, L. 1989.

Cross-References

U.C.C. — funds transfers — unenforceability of certain verified payment orders, 30-4A-203.

U.C.C. — funds transfers — erroneous payment orders, 30-4A-205.

Destruction of bank records, 32-1-491.

Consumer information, 32-6-104.

32-6-304. Repealed. Sec. 17, Ch. 117, L. 1997.

History: En. 5-1714 by Sec. 14, Ch. 503, L. 1977; R.C.M. 1947, 5-1714.

32-6-305. Repealed. Sec. 16, Ch. 265, L. 1995.

History: En. 5-1715 by Sec. 15, Ch. 503, L. 1977; R.C.M. 1947, 5-1715; amd. Sec. 4, Ch. 255, L. 1989.

32-6-306. Personal identification number — restrictions. (1) A financial institution may not assign a personal identification number to a customer which is identical to that customer's social security account number, driver's license number, or any other number assigned for other purposes to that customer.

(2) A satellite terminal may not be operated so as to print a customer's personal identification number on the humanly readable receipt furnished at the time of a transaction.

History: En. 5-1716 by Sec. 16, Ch. 503, L. 1977; R.C.M. 1947, 5-1716.

Cross-References

U.C.C. — funds transfers — security procedure, 30-4A-201.

Personal identification number defined, 32-6-103.

Driver's license, 61-5-111.

32-6-307. Repealed. Sec. 16, Ch. 265, L. 1995.

History: En. 5-1717 by Sec. 17, Ch. 503, L. 1977; R.C.M. 1947, 5-1717.

32-6-308. Repealed. Sec. 16, Ch. 265, L. 1995.

History: En. 5-1718 by Sec. 18, Ch. 503, L. 1977; R.C.M. 1947, 5-1718.

32-6-309. Repealed. Sec. 16, Ch. 265, L. 1995.

History: En. 5-1719 by Sec. 19, Ch. 503, L. 1977; R.C.M. 1947, 5-1719.

Part 4

Regulation and Enforcement (Repealed. Sec. 17, Ch. 117, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

32-6-401. En. 5-1720 by Sec. 20, Ch. 503, L. 1977; R.C.M. 1947, 5-1720.

32-6-402. En. 5-1721 by Sec. 21, Ch. 503, L. 1977; R.C.M. 1947, 5-1721.

CHAPTER 7

ESCROW BUSINESSES

Part 1 — Regulation of Escrow Businesses

32-7-101. Title and purpose.
32-7-102. Definitions.
32-7-103. Exemptions.
32-7-104. Exemption or exception — burden of proof.
32-7-105 through 32-7-107 reserved.
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32-7-115. Maintenance of records.
32-7-116. Statement of account.
32-7-117. Deposit of funds required — disbursement.
32-7-118 through 32-7-120 reserved.
32-7-121. Unauthorized business practices — penalty.

32-7-122. Investigations by director — desist order — injunctions or other actions.
32-7-123. Subpoenas — oaths — examinations of witness and evidence.
32-7-124. Hearings and appeals.

Part 1
Regulation of Escrow Businesses

32-7-101. Title and purpose. (1) This part shall be known and may be cited as the "Regulation of Escrow Businesses Act".

(2) It is the intent of the legislature that the escrow industry be supervised and regulated by the financial division of the department of commerce in order to protect the citizens of the state and to provide that the business practices of the escrow industry are fair and orderly among the members of the escrow industry, with due regard to the ultimate consumers in this important area of property protection.

History: En. Sec. 1, Ch. 651, L. 1989.

32-7-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of commerce as provided for in Title 2, chapter 15, part 18.

(2) "Director" means the director of the department of commerce.

(3) "Escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making payments under any encumbrance of the property, delivers any written instrument, money, evidence, title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, or bailor or to any of his agents or employees pursuant to the written escrow instructions.

(4) "Escrow business" means a commercial activity characterized by the regular and continuous carrying on of escrow transactions.

(5) "Licensee" means a person holding a valid license under this part as an escrow business.

(6) "Person" means an individual, cooperative, association, company, firm, partnership, corporation, or other legal entity.

History: En. Sec. 2, Ch. 651, L. 1989.

32-7-103. Exemptions. (1) The provisions of this part do not apply to the following:

(a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

(b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

(c) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies and the person is regulated by the commissioner of insurance;

(d) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution must supply a copy of the most recently prepared audit or examination to the director upon his request.

(e) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if he is performing an act:

(i) in the course of or incidental to a single real estate transaction; and

(ii) for which a real estate license is required; and

(f) any person furnishing escrow services under the order of a court.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part.

History: En. Sec. 3, Ch. 651, L. 1989.

32-7-104. Exemption or exception — burden of proof. In any proceeding under this part, the burden of proving an exemption or exception from a definition is upon the person claiming it.

History: En. Sec. 4, Ch. 651, L. 1989.

32-7-105 through 32-7-107 reserved.

32-7-108. Director — powers and duties. (1) The director shall exercise general supervision and control over persons doing escrow business in this state.

(2) In addition to the other duties imposed upon him by law, the director shall:

(a) adopt reasonable rules necessary to effectuate the purposes of this part;

(b) conduct examinations and investigations that may be necessary to determine whether a person has engaged or is about to engage in any act or practice constituting a violation of any provisions of this part;

(c) conduct examinations, investigations, and hearings necessary and proper for the efficient administration of this part; and

(d) establish fees commensurate with the costs of issuing the license and examining an escrow business.

History: En. Sec. 5, Ch. 651, L. 1989.

Cross-References

Rule defined, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

32-7-109. Application for license — issuance. (1) A person must be licensed pursuant to this part before engaging in an escrow business.

(2) To obtain a license, an applicant shall file with the director an application for an escrow business license. The application must be in writing, verified by oath, and in the form prescribed by the director. The application must set forth:

(a) the location of the applicant's principal office and all branch offices in this state;

(b) the name and form under which the applicant plans to conduct business;

(c) the general plan and character of the business;

(d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each his capacity and title;

(e) the experience and qualifications of the persons proposed to act as officers and managers;

(f) the length of time the applicant has been engaged in the escrow business; and

(g) any other relevant information the director requires.

(3) The director shall grant and issue an escrow business license if:

(a) the director has received and filed the application specified in this section; and

(b) the applicant has complied with all the requirements of this part and any rules promulgated under it.

(4) An escrow business shall immediately notify the department of any material change in the information contained in the application.

History: En. Sec. 6, Ch. 651, L. 1989.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

32-7-110. Fees. (1) (a) An applicant for licensure shall pay a license fee set by the director, commensurate with the costs of licensing the applicant.

(b) A licensee may be charged an examination fee based on the actual costs of the examination.

(2) All fees collected by the department for the licensure and examination of escrow businesses must be paid to the state treasurer to the credit of the state special revenue fund for use by the department in its licensure and examination functions under this part.

History: En. Sec. 11, Ch. 651, L. 1989.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Professional and occupational licensing boards to establish fees commensurate with costs, 37-1-134.

32-7-111. Transferability. An escrow business license is not transferable or assignable. The provisions of this section apply to the change of ownership of any escrow business, including the change of control over any corporation licensed as an escrow business. For purposes of this section, "change of control" means the transfer of 25% or more of the outstanding voting stock of the corporation.

History: En. Sec. 7, Ch. 651, L. 1989.

32-7-112 through 32-7-114 reserved.

32-7-115. Maintenance of records. (1) A licensee shall establish and maintain the books, accounts, and records necessary to enable the director at any time to determine whether the escrow transactions performed by the licensee comply with the provisions of this part. The books, accounts, and records must be maintained in accordance with generally accepted accounting principles and good business practice.

(2) A licensee shall establish and maintain the following records concerning general accounts:

(a) a general record reflecting the assets, liabilities, capital, income, and expense of the business, maintained in accordance with generally accepted accounting principles;

(b) a cash receipt and disbursement journal; and

(c) a reconciliation of monthly statements to the general record.

(3) The records referred to in subsections (1) and (2) must be reconciled at least once each month with the bank statements reflecting each escrow account.

(4) A licensee shall preserve for at least 3 years after the close of any escrow:

(a) all bank statements reflecting each escrow account and records of monthly reconciliations of the statements to the general record;

(b) all canceled checks drawn on each escrow account;

(c) any additional records reflecting banking transactions regarding each escrow account, including copies of all receipts for funds transferred from other accounts into each escrow account;

(d) all statements of account;

(e) all escrow instructions and amendments to them; and

(f) all additional records pertinent to each escrow transaction.

(5) A licensee shall perform one of the following:

(a) file annually with the director, on or before April 30, a statement of its financial condition, transactions, and affairs as of the preceding December 31. The director may grant an extension, not to exceed 10 days, on or before the April 30 filing date if the licensee demonstrates good cause for an extension. The financial statement must be certified by an independent public accountant and must be in a form and contain the information prescribed by the director.

(b) request that the director examine the financial condition, transactions, and affairs of the licensee pursuant to procedures prescribed by the director.

History: En. Sec. 8, Ch. 651, L. 1989.

32-7-116. Statement of account. A licensee shall provide a full statement of an escrow account established under an escrow agreement within 14 days of a written request made by a party to the escrow agreement. The statement must state:

(1) credits to principal;

(2) interest earned for the period; and

(3) other information requested.

History: En. Sec. 9, Ch. 651, L. 1989.

32-7-117. Deposit of funds required — disbursement. (1) All money deposited in an escrow to be delivered upon the close of the escrow or upon any other contingency must be deposited with a financial institution, as defined in 32-6-103, doing business in this state and must be kept separate, distinct, and apart from funds belonging to the escrow business. The funds, when deposited, must be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the escrow business.

(2) A person may not knowingly keep or cause to be kept any funds or money with a financial institution, as defined in 32-6-103, under the heading of "escrow accounts" or any other name designating the funds or money as belonging to the clients of any escrow business, except actual escrow funds deposited with the escrow business.

(3) Escrow funds are not subject to execution or attachment on any claim against the escrow business.

(4) Any interest received on funds deposited with an escrow business in connection with any escrow that is deposited in an authorized depository must be paid over to the depositing party to the escrow account and may not be transferred to an account of the escrow business. This section does not limit or restrain the right of the depositing party to contract with respect to the interest received on the deposits by an independent agreement.

(5) An escrow business may not disburse funds from any escrow account until cash, items, or drafts in an amount sufficient to fund any disbursements from the account have been received and deposited in the account and are available for withdrawal from the account as a matter of right. For the purposes of this subsection, the following definitions apply:

(a) "Available for withdrawal from the account as a matter of right" means that the bank or savings and loan association in which an item has been deposited considers the item available for withdrawal as a matter of right and that a final settlement will occur in writing with respect to that item.

(b) "Item" means any check, including a cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order.

History: **En. Sec. 10, Ch. 651, L. 1989.**

32-7-118 through 32-7-120 reserved.

32-7-121. Unauthorized business practices — penalty. (1) Unauthorized business practices of escrow businesses include but are not limited to the following:

(a) issuing, circulating, making use of, or publishing, by any means of communication, an advertisement indicating that a person is in the escrow business if that person is not a licensed escrow business;

(b) soliciting or accepting an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after the signing or initialing of the escrow instruction or permitting any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion, or alteration is signed or initialed by the affected party who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion, or alteration;

(c) failing to carry out the escrow transactions pursuant to the written escrow instructions unless amended by the written agreement of all parties to the escrow agreement or their assigns;

(d) accepting any escrow transaction that requires or has required the prepayment, deduction, or withholding of any sum to cover payments on the indebtedness or any prior encumbrance if the payments are not due and payable to the mortgagee or obligee at the time the escrow is established. However, payments may be made on property taxes for the current year or for the next annual premium on hazard insurance.

(e) refusing to allow parties to an escrow transaction or designated agents of those parties access to the records of the escrow transaction; and

(f) failing to promptly distribute funds pursuant to escrow instructions.

(2) Any licensee who engages in an unauthorized business practice is subject to the revocation or suspension of the licensee's license.

History: **En. Sec. 12, Ch. 651, L. 1989.**

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

32-7-122. Investigations by director — desist order — injunctions or other actions. (1) The director may investigate, upon complaint or otherwise, if it appears that:

(a) an escrow business is conducting its business in an unsafe and injurious manner or in violation of this part or any rule promulgated pursuant to this part; or

(b) a person is engaging in the escrow business without being licensed under the provisions of this part.

(2) (a) If it appears to the director, upon sufficient grounds or evidence satisfactory to the director, that an escrow business has engaged or is about to

engage in any act or practice in violation of this part or any rule or order issued pursuant to this part or that the assets or capital of any escrow business or company are impaired or the licensee's affairs are in an unsafe condition, the director may summarily order the escrow business to cease and desist from the act or practice or the director may apply to the district court of the first judicial district of Lewis and Clark County to enjoin the act or practice and to enforce compliance with this part or for any other appropriate equitable relief.

(b) Upon a proper showing, the court may:

(i) grant a temporary restraining order, followed by a preliminary injunction and a permanent injunction;

(ii) appoint a receiver for the defendant or defendant's assets;

(iii) cancel the licensee's license; and

(iv) order other equitable remedies the court considers necessary and appropriate.

(3) The court may not require the director to post a bond.

History: En. Sec. 13, Ch. 651, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Montana Rules of Civil Procedure, Title 25, ch. 20.

32-7-123. Subpoenas — oaths — examinations of witness and evidence. (1) In the conduct of any examination, investigation, or hearing, the director may:

(a) compel the attendance of any person or obtain any documents by subpoena;

(b) administer oaths;

(c) examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this part; and

(d) require the production of any books, records, or papers relevant to the inquiry.

(2) If a person refuses to obey a subpoena issued to the director, the district court of the first judicial district of Lewis and Clark County or other district court having proper venue, upon application by the director, may order the person to produce documentary evidence or to give evidence relating to the matter under investigation or in question. If a person fails to obey the order of the court, the person may be punished by the court as contempt of court.

History: En. Sec. 14, Ch. 651, L. 1989.

32-7-124. Hearings and appeals. The provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a contested case brought under this part.

History: En. Sec. 15, Ch. 651, L. 1989.

CHAPTER 8

MONTANA FOREIGN CAPITAL DEPOSITORY ACT

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Part 1

General Provisions — Definitions

Part Cross-References

Nonapplicability of Title 32, ch. 1, 32-1-102.

32-8-101. Short title and scope. (1) This chapter may be cited as the "Montana Foreign Capital Depository Act".

(2) Parts 1 through 5 of this chapter set forth the terms and conditions under which a foreign or domestic financial institution may do business in Montana as a state-chartered foreign capital depository.

History: En. Sec. 2, Ch. 382, L. 1997.

32-8-102. Purpose. The legislature finds and declares that:

(1) political instability, economic insecurity, and financial risk outside the United States create incentives for the transfer and investment of foreign capital derived from legitimate estates and business activities to relatively safe places such as Montana;

(2) political conditions in some countries are contrary to the fundamental freedoms and individual liberties codified in international human rights law and contained in the Montana constitution;

(3) it is in the public interest of Montana to attract legally derived foreign capital for investment, revenue enhancement, and other economic development purposes as well as to facilitate tax abatement for residents and businesses in the state;

(4) the legislature has the authority, in connection with its effort to improve economic conditions in the state, to treat foreign persons differently than it does Montana citizens with respect to equal protection of the law;

(5) because the Internal Revenue Code prohibits Montana from offering the type of tax shelters to American citizens that are available to them in foreign jurisdictions and because few of the conditions prevalent in other countries that give rise to capital flight exist in the United States, Montana is both compelled and rationally motivated to offer specialized private financial services exclusively to foreign customers;

(6) the state has the competence, capacity, and legitimate authority to charter and regulate financial institutions under the dual banking system of the United States;

(7) a prudent blend of financial privacy, asset protection, and profitability may offer foreign depositors unique opportunities to build and preserve their wealth in Montana;

(8) it is the intent of the legislature to protect both state and national interests by promoting legal and technical standards and procedures to deter, prevent, and detect money laundering and other types of financial crime.

History: En. Sec. 1, Ch. 382, L. 1997.

32-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Bank holding company" means a company registered under the federal Bank Holding Company Act of 1956, as amended.

(2) "Board" means the state banking board provided for in 2-15-1803.

(3) "Capital" means currency that is convertible to U.S. dollars or personal property, including tangible personal property.

(4) "Cash" means currency, cashier's checks, money orders, and other monetary instruments as defined in the Bank Secrecy Act (Public Law 91-508).

(5) "Charter" means a certificate issued by the state banking board through the commissioner to a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign capital depository.

(6) "Commissioner" means the commissioner of banking and financial institutions provided for in 32-1-211.

(7) "Controlling person" means a person who holds 5% or more of the equity in a depository or who is otherwise determined by the board to exercise controlling authority over decisions affecting the management and operation of the depository.

(8) "Customer" means a person who is using or has used the services of a foreign capital depository or for whom a foreign capital depository has acted as a fiduciary.

(9) "Department" means the department of commerce established in 2-15-1801.

(10) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

(11) "Foreign capital depository" or "depository" means a financial institution incorporated in Montana and chartered by the board to conduct business as a foreign capital depository in accordance with parts 1 through 5 of this chapter.

(12) "Money laundering" is the process through which the existence, illegal source, true ownership, or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear legitimate, thereby helping to evade detection, prosecution, seizure, or taxation.

(13) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

(14) "Person" means an individual, partnership, corporation, limited liability company, association, trust, or other legal entity.

(15) "Supervisory agency" means any of the following:

(a) the attorney general and the department of justice, established by 2-15-2001, for the purpose of the enforcement of all criminal laws of the state;

(b) the department, for the purposes of the administration and enforcement of the state laws relating to the examination and supervision of a foreign capital depository;

(c) the commissioner, for the purposes of the administration and enforcement of the state laws relating to the chartering and supervision of a foreign capital depository;

(d) the board, for the purposes of chartering a foreign capital depository;

(e) the federal reserve system, when the chartered depository is a subsidiary of a financial institution domiciled outside the jurisdiction of the United States, for the purposes of examining a foreign capital depository;

(f) the legislative audit division, established by 5-13-301, for the purposes of the administration of state laws relating to the audit of state agencies and the collection and disbursement of public funds;

(g) the department of revenue, established by 2-15-1301, for the purposes of the administration and enforcement of laws relating to the collection of taxes or fees from a foreign capital depository;

(h) the insurance department, established by 2-15-1902, and the commissioner of insurance, established by 2-15-1903, for the purpose of the administration and enforcement of state laws relating to the regulation of an insurer of accounts in a foreign capital depository.

(16) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins, precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender.

History: En. Sec. 3, Ch. 382, L. 1997.

32-8-104. Charter required — misrepresentation cause for disqualification. (1) A person may not operate or conduct business as a depository in this state without a charter issued by the board.

(2) A depository shall post the charter certificate in a conspicuous place.

(3) A person who is found by the commissioner to have falsely represented to a customer that a charter had been obtained is permanently disqualified from obtaining a charter.

History: En. Sec. 4, Ch. 382, L. 1997.

Cross-References

Filing requirements regarding organization, incorporation, and articles of incorporation, 32-1-301.

32-8-105. Protection of appellation. A corporation that has not been issued a charter under the provisions of 32-8-201 may not transact business under a name or title that contains the words "foreign", "capital", and "depository" in any combination.

History: En. Sec. 5, Ch. 382, L. 1997.

32-8-106. Applicability of banking laws. The provisions of 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, part 5 (except 32-1-507), 32-1-901 through 32-1-912, and 32-1-921 apply to a foreign capital depository unless a section in this chapter or a rule or order issued under this chapter is inconsistent with any of the sections listed in this section.

History: En. Sec. 6, Ch. 382, L. 1997.

Cross-References

Nonapplicability of Title 32, ch. 1, 32-1-102.

32-8-107. Rulemaking authority. (1) The board shall adopt rules to implement 32-8-201, 32-8-202, and 32-8-205.

(2) The department shall adopt rules to implement 32-8-201, 32-8-302, and 32-8-308 and to specify the conditions under which a depository may be found to be operating in a manner that is unsafe or unsound.

History: En. Sec. 7, Ch. 382, L. 1997.

Part 2

Charter — Application — Fee

Part Cross-References

Disposition of money from certain designated license and other taxes, 15-1-501.

Organizations exempt from corporate license tax, 15-31-102.

Fee paid to state, 15-31-803.

Dissolution and disincorporation, 32-1-501.

32-8-201. Charter eligibility and application requirements. (1) In order to lawfully conduct business in Montana as a foreign capital depository, a person intending to own and operate a depository shall:

(a) obtain a state charter from the board through an application process established by the commissioner and administered by the department;

(b) make and file articles of incorporation in accordance with 32-1-301;

(c) submit an application to the board on a form provided by the commissioner. An application must be accompanied by:

(i) documents certifying that the identity of each director, executive officer, and controlling person of the proposed depository has been verified by means of a background check;

(ii) a written copy of the applicant's know your customer policy and a written description of the implementation method for the policy;

(iii) a detailed written description of the applicant's personnel training and preemployment screening programs, physical and technological security systems, and methods of compliance with applicable federal recordkeeping and reporting laws;

(iv) a business plan that includes projections of costs, profitability, and relevant changes in financial markets;

(v) the intended location of each depository office in the state;

(vi) a document from a certified public accountant confirming that the applicant has financial assets in excess of liabilities in an amount established by board rule;

(vii) a nonrefundable charter application fee set by the board under 32-8-205 to be paid into the foreign capital depository account established in 32-8-306.

(2) A foreign capital depository may be a subsidiary of a foreign bank that has obtained approval from the federal reserve system to operate in the United States in accordance with the Foreign Bank Supervision Enhancement Act of 1991.

History: En. Sec. 8, Ch. 382, L. 1997.

Cross-References

Filing requirements regarding organization, incorporation, and articles of incorporation, 32-1-301.

32-8-202. Charter application — grounds for denial. (1) To safeguard the interests and the reputation of the state, the board shall deny a charter application if it finds that the applicant planning to operate the depository is not of good character or that the applicant is not financially sound.

(2) The board may find that the person planning to own, operate, or manage the depository is not of good character or financial integrity if a director, an executive officer, or a controlling person of the applicant has:

(a) been convicted of or has pleaded guilty or nolo contendere to any crime involving fraud, theft, conspiracy, racketeering, or money laundering;

(b) had a professional or occupational license suspended or revoked based on conduct involving an act of fraud or dishonesty;

(c) willfully made or caused to be made false or misleading statements in an application or report to the commissioner or has willfully omitted facts required in the report;

(d) willfully violated a provision of 32-8-104 or 32-8-201 or aided, abetted, counseled, commanded, induced, or procured the violation by another person of a provision of 32-8-104 or 32-8-201.

(3) Subsections (1) and (2) are not exclusive of other grounds on which the board may determine that an applicant for a depository charter is not of good character and therefore may not receive a charter.

(4) The board may authorize the commissioner to conduct or obtain from a private investigative service a background check on any director, executive officer, or controlling person of the depository for the purposes of determining whether an applicant is of good character.

(5) The board shall adopt rules concerning the method and process for determining whether an applicant for a charter is financially sound.

History: **En. Sec. 9, Ch. 382, L. 1997.**

32-8-203. Suspension, revocation, and restoration of charter. (1) The board may suspend or revoke the charter of a depository if the board finds that the depository or any director, executive officer, or controlling person of the depository has:

(a) violated a provision of parts 1 through 5 of this chapter, a rule of the department established pursuant to parts 1 through 5 of this chapter, the Bank Secrecy Act, or any implementing regulation of the Bank Secrecy Act;

(b) failed to comply with an order of the commissioner;

(c) operated in a manner or condition that is unsafe or unsound;

(d) become insolvent in that the depository has ceased to pay its debts in the ordinary course of business, it is unable to pay debts as they come due, or its liabilities exceed its assets;

(e) filed a petition for an adjudication of bankruptcy;

(f) knowingly made a false statement or report to the department;

(g) failed to pay the department of revenue the fee, penalty, or interest owed pursuant to 15-31-803 through 15-31-805 before 5 p.m. on the last day of the 11th month after the date a deficiency assessment is mailed; or

(h) if the depository is a subsidiary of a foreign bank holding company or another type of financial institution, had its operating license suspended or revoked in the country where the parent company is domiciled.

(2) Before suspending or revoking a charter, the board shall conduct a hearing in accordance with the Montana Administrative Procedure Act relating to a contested case.

(3) On the recommendation of the department, the board may reinstate a charter that has been suspended or revoked if the board finds that the depository has restored its integrity and financial soundness.

(4) At no time during or following the suspension, revocation, or reinstatement of a charter may a financial record pertaining to an individual account be disclosed except in accordance with rules for the conduct of examinations in 32-8-303 or in accordance with part 5 of this chapter.

History: **En. Sec. 10, Ch. 382, L. 1997.**

32-8-204. Administrative orders by commissioner. (1) In addition to or in lieu of the board's suspending or revoking the charter issued to a foreign capital depository, the commissioner may:

(a) issue a cease and desist order that specifies the activity that the depository may not undertake for the duration of the order;

(b) require a depository to take action as determined by the commissioner; or

(c) order the depository to pay a civil penalty in an amount not to exceed $10,000 for each violation or, in the case of a continuing violation, $10,000 for each day during which the violation continues.

(2) Orders issued by the commissioner pursuant to this section must be issued in compliance with the contested case procedure of the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 382, L. 1997.

32-8-205. Application, charter, and renewal fee. (1) An applicant for a state charter shall pay a fee established by the board by rule. The application fee must be commensurate with the cost of conducting a background check on the person applying for the charter.

(2) A successful applicant for a state charter shall pay to the department an initial charter fee of $50,000, less the amount paid for the application fee pursuant to subsection (1).

(3) A depository shall pay an annual charter renewal fee in an amount set by the board by rule but not to exceed $10,000.

(4) Fees collected pursuant to subsections (1) through (3) must be deposited in the foreign capital depository account established in 32-8-306.

History: En. Sec. 12, Ch. 382, L. 1997.

Part 3

Regulation and Supervision — Depository Account and Services

Part Cross-References

Bonding requirements for employees, 32-1-461.

Persons previously convicted under banking laws, 32-1-462.

Fraud by director, officer, agent, or employee, 32-1-464.

Removal of directors, officers, or employees, 32-1-468.

Theft of funds by directors, officers, or employees, 32-1-473.

32-8-301. Regulation and supervision — rules. (1) To ensure that the department meets its responsibility for the prudential supervision of a foreign capital depository, the department shall adopt rules that:

(a) determine the processes and procedures necessary to ensure that the controlling persons and employees and the procedures of a depository are in compliance with this chapter;

(b) establish the procedures for the conduct of examinations of a depository by the department, including the means by which the commissioner will verify that the depository's know your customer policy has been implemented;

(c) establish the form of suspicious activity reports and the conditions under which a suspicious activity report must be filed with the department;

(d) require a depository to submit to the department on request a written or electronic record of any transfer or withdrawal of cash from the depository in an amount equal to or greater than $10,000;

(e) require a depository to file an annual report with the department detailing the depository's:

(i) security measures designed to deter and prevent theft, fraud, and corruption;

(ii) procedures for filing suspicious activity reports with the U.S. department of the treasury and for keeping records and filing reports of transactions as required by federal law and regulation to combat money laundering and other criminal activities;

(iii) employee training programs regarding disclosure and other aspects of customer financial privacy; and

(iv) fulfillment of the know your customer policy recommended by the American bankers association or prescribed by federal regulation.

(2) With respect to an action concerning the issuance, suspension, or revocation of a charter or an action pursuant to enforcement in 32-8-601 through 32-8-603, the department shall adopt rules to determine prehearing discovery procedures, including the taking of depositions and the production of documents.

(3) In adopting rules for hearings, the department shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives to apply both to discovery procedures and to hearings.

History: En. Sec. 13, Ch. 382, L. 1997.

32-8-302. Costs of regulation. A depository shall pay to the department an annual fee established by rule that is commensurate with the cost of conducting examinations of a depository by the department. The proceeds of the fee established by the department must be deposited in the foreign capital depository account created by 32-8-306.

History: En. Sec. 14, Ch. 382, L. 1997.

32-8-303. Examinations. (1) Except as provided in subsection (5), the department shall:

(a) examine, at least once every 12 months, each depository to:

(i) verify the depository's assets and liabilities;

(ii) ascertain the accuracy of the depository's books and records; and

(iii) determine whether the depository's methods of operation and conduct of business are in compliance with applicable laws and rules; and

(b) submit in writing to a depository examined in accordance with subsection (1)(a) a report of the examination's findings no later than 60 days after the completion of the examination.

(2) A controlling person or employee of a foreign capital depository shall exhibit to the department or an examiner from the federal reserve system on request the books, records, and accounts of the depository, except that the identity of a customer may not be disclosed to the department or any examiner unless the disclosure is necessitated by the department's procedure for verifying that the depository's know your customer policy has been implemented effectively.

(3) The department may issue subpoenas and administer oaths to any director, executive officer, controlling person, or employee of a foreign capital depository. In case of a refusal to obey a subpoena issued by the department, the refusal may be reported to the district court of the district in which the depository is located. The court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(4) If a depository charter is issued to a foreign bank, the department may conduct an examination of the depository:

(a) in conjunction with supervisory personnel from the federal reserve system, or;

(b) without the assistance of federal reserve system personnel.

(5) The department may accept as the examination of a depository required by this section the findings or results of an examination conducted by the federal reserve system.

(6) A foreign capital depository shall keep its corporate records, financial records, and books of account in words and figures of the English language, in Montana, and in a form satisfactory to the department.

(7) If a foreign capital depository is issued a charter to maintain two or more offices in the state, the depository shall designate one of its offices as its primary office for the purposes of keeping consolidated records and facilitating examinations by the department.

History: En. Sec. 15, Ch. 382, L. 1997.

32-8-304. Special examinations — costs. (1) Whenever in the judgment of the commissioner the condition of a depository or the actions of a customer necessitate an examination beyond that required by 32-8-303, the department may conduct additional examinations determined to be necessary and in connection with the additional examinations may charge the depository:

(a) an amount not to exceed $400 a day for each examiner engaged in the examination of the depository;

(b) the actual cost of travel expenses of the examiner in the event that travel outside this state is determined necessary by the commissioner; and

(c) a reasonable amount to recover the actual costs of counsel and other department resources.

(2) The money collected by the department pursuant to examination fees must be deposited in the foreign capital depository account established in 32-8-306.

History: En. Sec. 16, Ch. 382, L. 1997.

32-8-305 reserved.

32-8-306. Foreign capital depository account. (1) There is an account in the state special revenue fund. Except for revenue derived in accordance with 15-31-803 through 15-31-805, money from the foreign capital depository must be deposited in the account.

(2) The money in the account may be appropriated by the legislature to the department solely for the department's use in meeting its supervisory and regulatory obligations established in 32-8-205 and 32-8-301 through 32-8-304.

History: En. Sec. 17, Ch. 382, L. 1997.

32-8-307 reserved.

32-8-308. Reports — contents and restrictions. (1) A depository shall make a report to the department in the manner and at the time required by the commissioner.

(2) A report filed with the department must:

(a) contain the information required by rule; and

(b) be verified by two of the depository's executive officers. The verification must state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement in the report is true.

(3) A depository may not include any financial record, as defined in 32-8-502, of any customer in the report.

(4) The department may provide a copy of the report to another supervisory agency.

History: En. Sec. 18, Ch. 382, L. 1997.

32-8-309. Recordkeeping and reporting — suspicious activity. In addition to compliance with applicable provisions of the Bank Secrecy Act, a foreign capital depository shall:

(1) keep a written or electronic record of each wire transfer or other electronic means of transferring capital to the depository for at least 5 years when the transfer involves $3,000 or more; and

(2) comply with federal regulation and rules of the department concerning the form of a suspicious activity report and the conditions under which a suspicious activity report is required to be reported to a supervisory agency or to the U.S. department of the treasury.

History: En. Sec. 19, Ch. 382, L. 1997.

Cross-References

Destruction of records, 32-1-491.

Reproduction of records — admissibility in evidence, 32-1-492.

32-8-310 reserved.

32-8-311. Sale or transfer of charter prohibited — penalty. (1) A charter issued by the board may not be sold, traded, transferred, or otherwise assigned to another corporation.

(2) A person who attempts to sell, trade, or transfer a depository charter or who knowingly accepts a depository charter in violation of subsection (1) is subject to civil and criminal penalties pursuant to 32-8-602 and 32-8-603.

History: En. Sec. 20, Ch. 382, L. 1997.

32-8-312. Dissolution — closing. (1) The board may, upon a finding of negligence, misconduct, or any of the conditions specified in 32-8-202 dissolve the charter of a depository and remove any directors, executive officers, or employees prior to the dissolution in accordance with the provisions of Title 32, chapter 1, part 9.

(2) The department may close a depository and take possession of the books, records, and assets of the depository and hold them until the depository is authorized by the board to resume business or until its affairs are liquidated in accordance with Title 32, chapter 1, part 5.

(3) Except in accordance with the provisions in part 5 of this chapter, an individual financial record may not be disclosed in the process of dissolving or closing a depository, and the penalties for wrongful disclosure in part 5 of this chapter apply to the board, the department, and the depository.

(4) A foreign capital depository may not close its primary office or cease operations without the written approval of the department.

(5) Voluntary dissolution of a depository must comply with the provisions of 32-1-501.

History: En. Sec. 21, Ch. 382, L. 1997.

32-8-313 reserved.

32-8-314. Depository services — allowed and mandated. (1) A depository may:

(a) accept deposits in any currency or electronic form convertible to U.S. dollars;

(b) provide safe deposit and other storage services for the purpose of protecting the security of a customer's tangible personal property;

(c) convert cash deposits to purchase orders for platinum, palladium, gold, or silver bullion on behalf of or at the direction of a customer;

(d) purchase, sell, and pay interest to the customer derived from tax-exempt federal, state, county, or municipal bonds on behalf of or at the direction of a customer;

(e) provide a customer with foreign currency in exchange for U.S. dollars in an equivalent monetary amount;

(f) perform trust and related fiduciary services, as provided in 32-1-107, but only if the depository has obtained a certificate from the department authorizing the depository to act as a trust company or the subsidiary of a trust company prior to engaging in trust activities;

(g) issue a debit card or an automated teller machine card to a customer;

(h) charge interest in relation to a customer's use of a debit or automated teller machine card;

(i) establish different types of deposit accounts for customers;

(j) offer deposit or safe deposit insurance provided under contract with a financial guaranty insurer approved by the insurance commissioner;

(k) charge fees related to the opening, management, and insuring of deposit accounts, the storage and maintenance of tangible personal property, the establishment and administration of trust accounts, and other lawful investment, legal, or financial services;

(l) set underwriting standards for each type of account that it offers to a customer; and

(m) establish a minimum deposit amount for any type of account as long as the minimum is not less than $200,000.

(2) A depository may in its discretion refuse an application for an account of any type.

(3) A depository shall:

(a) exercise extraordinary diligence in determining the genuine identity of a customer;

(b) protect the privacy of each customer as provided in part 5 of this chapter;

(c) in accordance with Title 25, chapter 9, part 8, provide legal defense of a customer at the customer's request or on the request of the customer's legal representative in the event a civil judgment rendered against the depositor in a jurisdiction outside the United States is registered in Montana;

(d) with respect to precious metals accounts in part 4 of this chapter, comply with the statutory protections against securities fraud under Title 30, chapter 10;

(e) comply with federal reporting and recordkeeping requirements as provided in the Bank Secrecy Act, the Money Laundering Control Act of 1986, the Annunzio-Wylie Anti-Money Laundering Act, and implementing regulations of each of those acts concerning money laundering and other financial crimes.

History: En. Sec. 22, Ch. 382, L. 1997; amd. Sec. 68, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in (1)(g) and (1)(h) substituted "automated teller machine card" for "automatic teller machine card". Amendment effective March 15, 1999.

Cross-References

Authorization to conduct safe deposit department, 32-1-446.

32-8-315. Depository services — restrictions and prohibitions. (1) A depository may not accept a deposit:

(a) from an individual who is a citizen or a resident of the United States;

(b) from a corporation, trust, or partnership if any shareholder, settlor, member, beneficiary, or partner is a citizen or a resident of the United States;

(c) in an amount valued at less than $200,000 in U.S. dollars.

(2) A depository may not:

(a) provide services to any customer who is not a nonresident alien;

(b) engage in lending or any related commercial banking services as defined in the Bank Act, except:

(i) in a case in which fiduciary lending is necessitated by a trust obligation and the depository has obtained a certificate from the department authorizing the depository to act as a trust company or the subsidiary of a trust company; or

(ii) in relation to a precious metals account as provided in part 4 of this chapter;

(c) transfer $10,000 or more of a customer's cash on deposit to another financial institution inside or outside the jurisdiction of the United States without submitting a record of the transaction to the commissioner and the attorney general that includes the customer's name, last-known address, and if the customer is an individual, passport number;

(d) accept a deposit from a customer who has been convicted of a state or federal felony in the United States or from a corporation of which a controlling person has been convicted of a state or federal felony in the United States.

History: En. Sec. 23, Ch. 382, L. 1997.

32-8-316. Sale or trade of deposit accounts prohibited — transfers allowed. (1) The legislature does not intend to create or facilitate the creation of a secondary market for depository accounts. Therefore, except for the condition set forth in subsection (2), the sale or trade of a deposit account by a depository is prohibited.

(2) A depository may permit the legal transfer of a deposit account from a customer to the customer's heir, spouse, or designated next of kin for the purposes of estate preservation and maintenance.

History: En. Sec. 24, Ch. 382, L. 1997.

Part 4

Precious Metals Accounts

32-8-401. Precious metals accounts — purpose. (1) The legislature acknowledges that:

(a) Montana is both a major gold producer and the only domestic source of commercially significant amounts of platinum and palladium, precious metals that have diverse uses in addition to serving as a store of exchangeable value;

(b) many nonresident aliens and foreign corporations place great value in the security inherent in precious metals as a hedge against currency depreciation, currency devaluation, and general inflation and prefer precious metals over other types of investments that may offer a higher or more certain rate of return;

(c) the expansion of the processing and refining capacity of the platinum and palladium mining operations in Montana's Stillwater complex may provide unique investment opportunities for nonresident aliens and a significant stimulus for economic development in the state; and

(d) helping to establish financial links between customers of the depository and products of the precious metals depository is in the economic interest of the state.

(2) The legislature further recognizes its responsibility to help deter money laundering and other financial crime and therefore acknowledges that restricting the liquidity of a precious metals account will reduce significantly any incentive there may be for a person to use a precious metals account for illicit purposes.

History: En. Sec. 25, Ch. 382, L. 1997.

32-8-402. Definition. For the purposes of parts 1 through 5 of this chapter, a precious metals account is a depository account in which the depository, upon instructions of a customer, exchanges cash for a commensurately valued amount of platinum, palladium, gold, or silver bullion procured by the depository for the primary purpose of safekeeping over an extended period of time.

History: En. Sec. 26, Ch. 382, L. 1997.

32-8-403. Account requirements — provisions. (1) An agreement between the depository and a customer to establish a precious metals account must include the following provisions:

(a) a term of maturity that is not less than 36 months;

(b) a penalty for early withdrawal of an amount of precious metals that exceeds 20% of the monetary value of the total amount of precious metals in the account, with the monetary value to be equivalent to the spot market price of the precious metal listed in The Wall Street Journal on the date of the withdrawal;

(c) a requirement that the precious metals purchased by a customer be delivered to the depository within 7 days of verified payment of any part of the purchase price.

(2) A precious metals account may provide for limited withdrawal from the account by means of a debit card or an automated teller machine card as long as the total amount withdrawn from the account prior to the maturity date established in subsection (1)(a) does not exceed 20% of the total monetary value of the precious metals in the account.

(3) A depository may charge a customer interest and a fee in relation to a cash withdrawal made in accordance with subsection (2).

History: En. Sec. 27, Ch. 382, L. 1997; amd. Sec. 69, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in (2) near middle substituted "automated teller machine card" for "automatic teller machine card". Amendment effective March 15, 1999.

32-8-404. Termination — settlement. Upon termination of a precious metals account, whether at or before the date of maturity, the terms of settlement must allow:

(1) the depository to convert the precious metals to currency at the spot market rate on the day of settlement; and

(2) the depository's right to delay settlement for not more than 5 business days.

History: En. Sec. 28, Ch. 382, L. 1997.

Part 5

Financial Privacy

Part Cross-References

Fee for filing judgment against customer of foreign capital depository, 25-9-506.

Applicability of Uniform Foreign Money-Judgments Recognition Act, 25-9-603.

32-8-501. Financial privacy — purpose. The legislature finds and declares that:

(1) the viability of one or more foreign capital depositories in Montana depends to a large extent upon both the secure nature of the depository and the confidential nature of customer accounts and safe deposits in the depository and upon the confidential nature of transactions between a customer and a depository. Therefore, the purpose of this part is to clarify and protect the confidential relationship between foreign capital depositories and their customers and to balance a customer's right of privacy with the governmental interest in obtaining information for specific purposes and by specified procedures as set forth in this part. The confidential relationship between a foreign capital depository and its customers is to be protected by restrictions on the disclosure of financial records to supervisory agencies and a prohibition against disclosure of financial records to

other state and local agencies and to private individuals except under specified conditions.

(2) a state offering secure and confidential depository services to its customers must be mindful that significant amounts of capital are derived from or moved for illegal purposes and that the United States and other jurisdictions have passed laws and worked diligently to prevent money laundering and other offenses from being conducted as part of otherwise lawful transactions;

(3) in licensing and supervising the operation of one or more foreign capital depositories, Montana needs to enforce its own criminal laws vigorously. It is also imperative that Montana cooperate with United States law enforcement and other authorities to effectively deter and, when deterrence fails, detect, investigate, and prosecute perpetrators of financial crimes.

(4) the purpose of this part is not to avoid the application of the Bank Secrecy Act, the Right to Financial Privacy Act of 1978, the Money Laundering Control Act of 1986, and the Annunzio-Wylie Anti-Money Laundering Act, which are intended to prevent or deter money laundering and other financial crimes while maintaining a degree of secrecy of customer bank accounts from federal agencies, but rather to apply state law in those areas unregulated by these and other relevant federal laws. However, it is the intent of the legislature that if there is a clear and direct conflict between this part and applicable federal statutes, treaties, or regulations that cannot be resolved by other means, then the state law should be preempted in order to maintain the efficacy and integrity of United States laws intended to combat financial crimes.

History: En. Sec. 29, Ch. 382, L. 1997.

32-8-502. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Financial institution" includes state and national banks, state and federal savings and loan associations, trust companies, investment companies, and state and federal credit unions. The term does not include a title insurer while engaging in the conduct of the business of title insurance, an underwritten title company, or an escrow company.

(2) (a) "Financial record" means:

(i) an original or copy of a record or document held by a foreign capital depository that directly or indirectly pertains to a customer of the depository;

(ii) information contained in the original or copy of the record or document; or

(iii) the name of a customer.

(b) A record or document may, for the purposes of this subsection (2), be in a paper, electronic, or other format.

(3) "Investigation" includes an inquiry by a peace officer, as defined by 46-1-202, a sheriff, or a county attorney or an inquiry made for the purpose of determining whether there has been a violation of a law enforceable by imprisonment, fine, or monetary liability.

(4) "Local agency" includes a county, city, town, or other local government entity.

(5) "State agency" means an office, department, division, bureau, board, or commission of state government that is not a supervisory agency, including the legislature.

(6) "Subpoena" includes subpoena duces tecum.

History: En. Sec. 30, Ch. 382, L. 1997.

32-8-503. Request or receipt of records and information prohibited — exceptions — records to be maintained. (1) Except as provided in 32-8-515, 32-8-516, and this section, an officer, employee, or agent of a state or local agency may not request or receive a copy of a financial record from a foreign capital depository unless the financial record is consistent with the scope and purpose of any investigation by the state or local agency, is described with particularity, and:

(a) the customer has authorized disclosure of the financial record in accordance with 32-8-506;

(b) the financial record is disclosed in response to an administrative subpoena that meets the requirements of 32-8-507;

(c) the financial record is disclosed in response to a search warrant that meets the requirements of 32-8-508; or

(d) the financial record is disclosed in response to a judicial subpoena that meets the requirements of 32-8-509.

(2) The burden of proving that a required disclosure of a financial record is consistent with the scope and purpose of an investigation is upon the state agency or the local agency requiring disclosure of the financial record.

(3) Nothing in 32-8-506, 32-8-507, 32-8-508, 32-8-509, or this section requires a foreign capital depository to inquire or determine whether a person seeking disclosure of a financial record has complied with the requirements of those sections if the customer authorization, administrative subpoena, search warrant, or judicial subpoena served upon or delivered to the depository pursuant to any of those sections shows compliance on its face.

(4) A foreign capital depository shall maintain for a period of 5 years a record of all disclosures by a depository of the financial records of a customer pursuant to this part, including the identity of the person examining the financial records, the state or local agency that the person represents, and a copy of the customer authorization, administrative subpoena, search warrant, or judicial subpoena providing for examination or disclosure. A record of disclosures maintained pursuant to this subsection must be available, within 5 days of request, during normal business hours of the depository for review by the customer at the office or branch of the depository where the customer's account or safe deposit box was located when examined. A paper or electronic copy of the record of disclosures must be furnished by the depository to the customer upon request by the customer.

(5) This section does not prevent a state or local law enforcement agency from initiating contact with a foreign capital depository if there is reason to believe that the depository is a victim of a crime perpetrated by a customer. After contact by a law enforcement agency, if the foreign capital depository reasonably believes it is a victim of a crime, it may, in its discretion, disclose relevant financial records pursuant to 32-8-504(2). Conviction of or admission by a customer of a crime against the depository is conclusive on the issue of the reasonable belief of the depository.

History: **En. Sec. 31, Ch. 382, L. 1997.**

32-8-504. Disclosure of record to agency prohibited — exceptions. (1) Except as provided in 32-8-516 and this section, a foreign capital depository and a director, executive officer, controlling person, or employee of a foreign capital depository may not provide or authorize another person to provide a financial record to an officer, employee, or agent of a state or local agency.

(2) This section does not preclude a foreign capital depository, in its discretion, from initiating contact with and disclosing a relevant financial record to a supervisory agency concerning a suspected violation of state or federal law if the

depository reasonably believes that a violation of law has been committed. Conviction of or admission by a customer of a crime is conclusive on the issue of the reasonable belief of the depository.

History: En. Sec. 32, Ch. 382, L. 1997.

32-8-505. Disclosure of record to private individual prohibited — exceptions. (1) Except as provided in 32-8-516 and this section, a foreign capital depository and a director, executive officer, controlling person, or employee of a foreign capital depository may not provide or authorize another person to provide a financial record to an individual who is not an officer, employee, or agent of a state or local agency acting pursuant to Montana law or local ordinance or to an officer, employee, or agent of the United States acting pursuant to federal law.

(2) This section does not preclude a foreign capital depository, in its discretion, from initiating contact with and disclosing a relevant financial record to an appropriate state, local, or federal agency concerning a suspected violation of state or federal law if the depository reasonably believes that a violation of law has been committed. Conviction of or admission by a customer of a crime is conclusive on the issue of the reasonable belief of the depository.

History: En. Sec. 33, Ch. 382, L. 1997.

32-8-506. Customer authorization — form — notice to customer. (1) A director, executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record if the customer to whom the record relates has authorized disclosure of the record on a form provided by the depository that:

(a) is signed and dated by the customer;

(b) authorizes disclosure for a period set forth in the authorization statement;

(c) specifies the name of the person, supervisory agency, state agency, or local agency to whom or to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained; and

(d) identifies the financial record authorized to be disclosed.

(2) A foreign capital depository may not require a customer authorization to be signed by a customer as a condition of doing business with the depository.

(3) A customer may revoke an authorization by written notice to the foreign capital depository. The notice must contain a copy of the authorization to which it relates or contain the information originally required in the authorization to which it relates, must be signed and dated by the customer, and must contain a clear statement revoking the previous authorization.

(4) (a) A supervisory, state, or local agency obtaining a financial record pursuant to a customer authorization shall notify the customer in writing of the receipt of the financial record within 30 days of the agency's receipt of the financial record. However, by application to a judge of a court of competent jurisdiction in the county in which the financial record is located and upon a showing of good cause to believe that disclosure would impede the investigation, the notification requirements of this subsection (4)(a) may be extended for up to two additional 30-day periods. Thereafter, by application to a court upon a showing of extreme necessity for nondisclosure, the notification requirements of this subsection (4)(a) may be extended for up to three additional 30-day periods. At the end of that period or periods, the agency shall inform the customer that the customer has the right to make a written request as to the reason why the agency obtained the record. The

notice must specify the financial record that was obtained and, if requested, the reason why the record was obtained.

(b) Whenever practicable, an application for an additional extension of the notification time provided in subsection (4)(a) must be made to the judge who granted the first extension of notification time. In deciding whether to grant an extension of the notification time, the judge shall provide the customer with prompt notification, consistent with the purpose of this part.

History: En. Sec. 34, Ch. 382, L. 1997.

32-8-507. Administrative subpoena. (1) A director, executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record under 32-8-503(1)(b) pursuant to an administrative subpoena otherwise authorized by law and served upon the foreign capital depository only if:

(a) the person issuing the administrative subpoena has served a copy of the subpoena on the customer pursuant to Rule 4D of the Montana Rules of Civil Procedure;

(b) the subpoena includes the name of the agency in whose name the subpoena is issued and the statutory purpose for which the record is to be obtained; and

(c) 10 days have passed after service of the subpoena without the foreign capital depository or the customer moving to quash the subpoena.

(2) (a) The supervisory, state, or local agency issuing the administrative subpoena may not shorten or waive the requirements of subsection (1). However, the agency may petition a court of competent jurisdiction in the county in which the record is located, and the court, upon a showing of a reasonable inference that a law enforceable by the petitioning agency has been or is about to be violated, may order that service upon the customer pursuant to subsection (1)(a) or the 10-day period provided for in subsection (1)(c) be waived or shortened.

(b) For the purpose of this subsection (2), an "inference" is a deduction that may reasonably be drawn by the attorney general or the county attorney from facts relevant to the investigation.

(c) The petition may be presented to the court in person or by telephoned oral statement, which must be recorded and transcribed. In the case of telephonic petition, the recording of the sworn oral statement and the transcribed statement must be certified by the judge receiving it and must be filed with the clerk of the court.

(3) Except as provided in subsection (2) and this subsection, a foreign capital depository shall immediately notify a customer of the receipt of an administrative subpoena for a financial record of that customer. A court may order a depository to withhold notification to a customer of the receipt of an administrative subpoena when the court issues an order pursuant to subsection (2) and makes a finding that notice to the customer by the financial institution would impede the investigation.

History: En. Sec. 35, Ch. 382, L. 1997.

32-8-508. Search warrants. A director, executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record under 32-8-503(1)(c) only if the officer, employee, or agent obtains a search warrant pursuant to Title 46, chapter 5, part 2. Examination of a financial record may occur as soon as the warrant is served upon the foreign capital depository. A foreign capital depository shall notify a customer of the receipt of a search warrant unless a court orders the depository to withhold notification to the customer upon a written finding that notice would impede the investigation.

History: En. Sec. 36, Ch. 382, L. 1997.

32-8-509. Judicial subpoena. (1) A director, executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record under 32-8-503(1)(d) pursuant to a judicial subpoena only if one of the following has occurred:

(a) the subpoena is issued as otherwise authorized by law and served in compliance with Rule 4D of the Montana Rules of Civil Procedure and the requirements of subsection (1)(b), (1)(c), or (1)(d) have been met. In the event that actual service on the customer is not prohibited but has not been made prior to the time the financial record is required to be produced in response to the subpoena, the court shall, prior to turning over a record to the agency and upon good cause shown, make a finding that due diligence has been exercised by the agency in its attempt to effect service upon the customer.

(b) 10 days have passed after service of the subpoena on the customer and the depository without the customer or the depository having moved to quash the subpoena;

(c) the subpoena has been served upon the customer and the depository and a judge in a judicial proceeding to which the customer or the depository is a party rules that the subpoena should not be quashed. This subsection (1)(c) is not intended to preclude appellate remedies that may be available under existing law.

(d) the subpoena has been served upon the depository and a court orders that service of the subpoena upon the customer be delayed in accordance with this section. Service may be delayed for up to 30 days from the date of issuance of the judicial subpoena after the court makes a finding upon a written showing that service upon the customer would impede the investigation. The withholding of notification may be extended for additional 30-day periods if a court makes a finding upon a written showing, at the time of each extension, that service upon the customer would impede the investigation. Whenever practicable, an application for an extension of time must be made to the judge who issued the judicial subpoena. In deciding whether to grant an extension of the notification time, the judge shall endeavor to provide the customer with prompt notification, consistent with the purpose of this part.

(2) If testimony is to be taken concerning a financial record or if a financial record is to be produced before a court, the 10-day period provided for in subsection (1)(b) may be shortened by the court upon a showing of good cause. The court shall direct that all reasonable measures be taken to notify the customer within the shortened time period. The motion to quash the subpoena must be made, whenever practicable, in the judicial proceeding pending before the court.

(3) (a) A grand jury, upon resolution adopted by a majority of its members, may obtain financial records pursuant to a judicial subpoena based upon a written showing to a judge that there exists a reasonable inference that a crime within the jurisdiction of the grand jury has been committed and that the financial record sought is reasonably necessary to the jury's investigation of that crime. The judicial subpoena must be is personally signed and issued by a judge in accordance with 46-4-301 and must otherwise comply with the requirements of this section.

(b) For the purpose of this subsection (3), an "inference" is a deduction that may be reasonably drawn by the grand jury from facts relevant to the investigation.

(4) A showing required to be made pursuant to this section, as well as the court record of any finding made pursuant to the showing, must be sealed until one person named in the indictment to which the showing related has been arrested or until the end of the term of the grand jury if no indictment to which the showing relates has been returned. However, a court may unseal the showing and the court record relating to the showing on a written showing of good cause.

History: **En. Sec. 37, Ch. 382, L. 1997.**

32-8-510. Grounds for quashing subpoena — duty of depository. (1) A customer or a foreign capital depository has 10 days after service of an administrative or judicial subpoena upon either of them to file a motion to quash the subpoena before the administrative agency issuing the subpoena or a court with jurisdiction over the subpoena. The motion to quash may be based upon one or more of the following grounds:

(a) the financial record sought is incompetent, irrelevant, or immaterial for the purpose for which it is sought;

(b) the release of the financial record would cause an unreasonable burden or hardship under the circumstances upon the customer or the depository;

(c) the supervisory, state, or local agency or other person seeking the financial record is attempting to harass the customer or the depository;

(d) there is no merit in the purpose for which the financial record is sought; or

(e) the supervisory, state, or local agency or other person has not made a reasonable effort to first obtain the financial record or the equivalent of the record from some other source other than the depository, if some other source exists.

(2) A foreign capital depository shall move on the basis of all appropriate grounds, including those set forth in subsection (1), to quash an administrative or judicial subpoena if the customer or the agent of the customer to whom the record relates has not received actual notice of the subpoena. If a foreign capital depository cannot determine from the customer or the customer's agent whether the customer or the agent has received actual notice of the subpoena, the depository shall move to quash the subpoena unless the customer and the depository have agreed in writing to the contrary.

(3) Failure of the customer or the depository to file a motion to quash the subpoena before the time established for the return of the subpoena constitutes a waiver of the right to object to the release or disclosure of the financial record.

(4) During the period for the filing of a motion to quash and continuing until a ruling is made upon a motion to quash, the depository shall, unless prohibited by the court, make available to its customer a copy of the subpoenaed financial record and shall preserve the original record without alteration.

(5) If a depository or a customer files a motion to quash an administrative or judicial subpoena issued pursuant to 32-8-507 or 32-8-509, the proceeding must be afforded priority on the calendar of the agency or the court.

(6) A depository may charge a customer a fee for the reasonable cost of representing the interests of the customer pursuant to this section.

History: **En. Sec. 38, Ch. 382, L. 1997.**

32-8-511 through 32-8-514 reserved.

32-8-515. Limitations on use of financial record. (1) The original or a copy of a financial record obtained by a state or local agency or another person pursuant to this part may not be used or retained in any form for a purpose other than the statutory purpose for which the record was originally obtained. The statutory purpose must be determined with reference to the statute, rule, or other law sought to be enforced in the proceeding for which the record was obtained.

(2) A state or local agency may not provide a financial record obtained pursuant to this part to another state or local agency unless the other agency has independently obtained authorization to receive the financial record pursuant to this part. This subsection does not prohibit:

(a) the transfer by one supervisory agency that obtained a financial record pursuant to 32-8-516(1)(c) to another supervisory agency or supervisory agencies if that transfer otherwise complies with subsection (1); or

(b) the transfer of a financial record obtained pursuant to 32-8-508 by one criminal justice agency to another criminal justice agency in accordance with the Montana Criminal Justice Information Act of 1979.

(3) A supervisory, state, or local agency or a court obtaining a financial record by administrative subpoena, search warrant, or judicial subpoena shall, at the request of a customer or foreign capital depository, provide for the in camera review of the record to determine whether the record contains material that is not expected to be the subject of the investigation, inquiry, or proceeding. The supervisory, state, or local agency or the court shall liberally grant requests for in camera hearings, protective orders, and other appropriate processes to protect the confidential nature of a financial record. The agency or court may permit public disclosure of a financial record only if it finds that disclosure is necessary for the fair resolution of an issue before it.

(4) Documents of a supervisory, state, or local agency and documents produced in court containing a financial record must be sealed by the agency or court at the conclusion of the proceedings in order to prevent access to the record and may be opened only for good cause shown.

History: En. Sec. 39, Ch. 382, L. 1997.

32-8-516. Authorized disclosures of financial records. (1) This part does not prohibit:

(a) disclosure by a foreign capital depository of a financial record that is not identified with or identifiable as being derived from a financial record of a particular customer by name;

(b) disclosure by a foreign capital depository to a department, agency, office, bureau, or commission of the United States of a financial record when required by federal statute or regulation or when required pursuant to the terms of a treaty or other agreement between the United States and the government of a foreign country;

(c) disclosure of a financial record by a foreign capital depository to a supervisory agency when the disclosure is conducted in response to an exercise of the agency's supervisory function. The scope of an agency's supervisory function must be determined by reference to statutes granting authority to examine, audit, or require reports concerning a financial record or foreign capital depository.

(2) Whenever the request, order, demand, or other requirement for disclosure of a financial record prohibits the release to a customer of the facts of a disclosure, a foreign capital depository may not disclose either the fact or nature of the request, order, demand, or other requirement for disclosure or the depository's response to a customer or to any other person, except the officers and employees of the depository who are involved in responding to the request and to attorneys, auditors,

and regulatory authorities who have a need to know in order to perform their duties and except as disclosure may be required by legal process.

History: **En. Sec. 40, Ch. 382, L. 1997.**

32-8-517. Fee paid to foreign capital depository for disclosure of record. Except for a supervisory agency, a state agency or local agency obtaining a financial record in accordance with 32-8-506, 32-8-507, 32-8-508, or 32-8-509 shall pay to the depository providing the financial record a reasonable fee commensurate with the depository's costs of searching for, assembling, copying, labeling, and transporting the financial record in question.

History: **En. Sec. 41, Ch. 382, L. 1997.**

32-8-518. Confidentiality — supervisory agency personnel — penalty for violation. (1) Except as required by judicial order or as otherwise provided by 32-8-301 and this part, an employee of a supervisory agency who conducts an examination, investigation, or audit of a depository or who receives a report or another type of information about a depository from another employee of a supervisory agency may not disclose the identity of a customer to another person who is not officially associated with an examination, investigation, or audit of a depository.

(2) A person who knowingly violates subsection (1) must be removed from office and is guilty of a felony. Upon conviction, the person shall be punished by a fine of $10,000, by imprisonment in the state prison for not more than 10 years, or by both fine and imprisonment.

History: **En. Sec. 42, Ch. 382, L. 1997.**

32-8-519 and 32-8-520 reserved.

32-8-521. Civil liability for wrongful disclosure of financial record — damages and injunctive relief. (1) A state or local agency that requests or receives a financial record in violation of this part is liable to the customer to whom the record relates in the amount of damages provided in subsection (4).

(2) A person who is not employed by a supervisory, state, or local agency or by a foreign capital depository and who requests or receives a financial record in violation of this part is liable to the customer to whom the record relates in the amount of damages provided in subsection (4).

(3) A director, executive officer, controlling person, or employee of a foreign capital depository who discloses or authorizes another to disclose a financial record in violation of this part is liable to the customer to whom the record relates in an amount of damages provided in subsection (4).

(4) Damages are equal to the sum of the following:

(a) $10,000, without regard to the type or number of records involved;

(b) actual damages sustained by the customer; and

(c) costs incurred in the action to successfully enforce liability under this section, together with reasonable attorney fees.

(5) A foreign capital depository may exercise remedies provided in this section on behalf of a customer and in connection with the exercise of those remedies may act as the real party in interest. Damages recovered by the depository must be deposited in an account of the customer, but a depository may retain amounts recovered for its costs and reasonable attorney fees.

(6) The remedies provided in this section are not exclusive.

(7) In addition to any other remedy allowed by law, a customer may bring an action for injunctive relief under Title 27, chapter 19, to enforce the provisions of this part.

History: En. Sec. 43, Ch. 382, L. 1997.

32-8-522. Unlawful disclosure of financial record — criminal penalties. (1) A director, executive officer, controlling person, or employee of a foreign capital depository who discloses a financial record in violation of this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $5,000, by imprisonment in the state prison for not more than 1 year, or by both fine and imprisonment. This subsection imposes absolute liability.

(2) A director, executive officer, controlling person, or employee of a foreign capital depository or an officer, employee, or agent of a state or local agency who knowingly discloses a financial record in violation of this part is guilty of a felony and upon conviction shall be punished by a fine of $10,000, by imprisonment in the state prison for not more than 10 years, or by both fine and imprisonment.

History: En. Sec. 44, Ch. 382, L. 1997.

32-8-523. Customer waiver invalid. A waiver by a customer of a right that is not authorized to be waived by this part is not valid whether granted with or without consideration.

History: En. Sec. 45, Ch. 382, L. 1997.

32-8-524. Limitation of actions. An action to enforce a provision of this part must be commenced within 3 years after the date on which the violation occurred.

History: En. Sec. 46, Ch. 382, L. 1997.

Part 6

Injunctions — Penalties

32-8-601. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) enjoin a violation of parts 1 through 5 of this chapter, a rule adopted pursuant to parts 1 through 5 of this chapter, the terms or conditions of a charter, or an order of the department or the board; or

(2) require compliance with parts 1 through 5 of this chapter , a rule adopted pursuant to parts 1 through 5 of this chapter, the terms or conditions of a charter, or an order of the department or the board.

History: En. Sec. 65, Ch. 382, L. 1997.

32-8-602. Civil penalties. (1) Except for the penalties for wrongful disclosure provided for in 32-8-521, a person who violates a provision of parts 1 through 5 of this chapter, a rule adopted under parts 1 through 5 of this chapter, the terms and conditions of a charter or an order of the department or the board is subject to a civil penalty not to exceed $10,000 for each day of violation. Each day of violation of parts 1 through 5 of this chapter, a rule adopted under parts 1 through 5 of this chapter, the terms or conditions of a charter, or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of parts 1 through 5 of this chapter, rules adopted under parts 1 through 5 of this chapter, orders of the department or the board, or terms or conditions of a charter by injunction or other appropriate remedy; or

(b) action under 32-8-603.

History: En. Sec. 66, Ch. 382, L. 1997.

32-8-603. Criminal penalties. (1) Except for the penalties for wrongful disclosure provided for in 32-8-522, a person who knowingly operates a foreign capital depository without a charter, in violation of the terms or conditions of a charter, or in violation of parts 1 through 5 of this chapter, a rule adopted pursuant to parts 1 through 5 of this chapter, or an order of the department or board or a person who knowingly makes any false statements or representations in an application, report, or other document filed or maintained as required by parts 1 through 5 of this chapter or required by rules adopted under parts 1 through 5 of this chapter is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of a violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of parts 1 through 5 of this chapter, rules adopted under parts 1 through 5 of this chapter, orders of the department or the board, or terms or conditions of a charter by injunction or other appropriate remedy.

History: En. Sec. 67, Ch. 382, L. 1997.

TITLE 33

INSURANCE AND INSURANCE COMPANIES

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4. Farm Mutual Insurers.
5. Reciprocal Insurers.
6. Benevolent Associations.
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15. The Insurance Contract.
16. Rates — Rating and Advisory Organizations.
17. Insurance Producers, Adjusters, Consultants, and Administrators.
18. Unfair Trade Practices.
19. Insurance Information and Privacy Protection.
20. Life Insurance.
21. Credit Life and Disability Insurance.
22. Disability Insurance.
23. Casualty Insurance.
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25. Montana Title Insurance Act.
26. Suretyship.
27. Independent Liability Fund.

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30. Health Service Corporations.
31. Health Maintenance Organizations.
32. Health Utilization Review.

Chapters 33 and 34 reserved.

35. Multiple Employer Welfare Arrangements.
36. Managed Care Plan Network Adequacy and Quality Assurance.
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CHAPTER 1

ADMINISTRATION AND GENERAL PROVISIONS

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Part 1
General Provisions

33-1-101. Short title. This title constitutes the "Montana Insurance Code".

History: En. Sec. 1, Ch. 286, L. 1959; R.C.M. 1947, 40-2601; amd. Sec. 1, Ch. 77, L. 1979.

33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

History: En. Sec. 9, Ch. 286, L. 1959; Sec. 40-2609, R.C.M. 1947; (2)En. Sec. 10, Ch. 286, L. 1959; Sec. 40-2610, R.C.M. 1947; (3)En. Sec. 11, Ch. 286, L. 1959; Sec. 40-2611, R.C.M. 1947; R.C.M. 1947, 40-2609, 40-2610, 40-2611; amd. Sec. 31, Ch. 457, L. 1987; amd. Sec. 1, Ch. 502, L. 1987; amd. Sec. 1, Ch. 558, L. 1987; amd. Sec. 52, Ch. 613, L. 1989; amd. Sec. 22, Ch. 4, Sp. L. May 1990; amd. Sec. 2, Ch. 727, L. 1991; amd. Sec. 12, Ch. 502, L. 1995; amd. Sec. 1, Ch. 590, L. 1995; amd. Sec. 1, Ch. 577, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 577 in (4) inserted second sentence outlining department's responsibilities; and substituted (6) allowing limitation of services for former text that read: "(6) This code does not apply to the functions performed by a managed care contractor providing mental health services under the Montana medicaid program as established in Title 53, chapter 6." Amendment effective May 6, 1999.

Cross-References

Secured transactions — exclusion, 30-9-104.

Securities registration — exemption, 30-10-104, 33-10-105.

Common trust funds — exclusion, 32-1-708.

Consumer loan businesses — insurance requirements, 32-5-306.

License required of health service corporations, 33-30-108.

33-1-103. Particular provisions prevail. Provisions of this code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general.

History: En. Sec. 16, Ch. 286, L. 1959; R.C.M. 1947, 40-2616.

Cross-References

Particular laws qualify general, 1-3-225.

33-1-104. General penalty. Each violation of any provision of this code with respect to which violation a greater penalty is not provided by other applicable laws of this state shall, in addition to any administrative penalty otherwise applicable thereto, upon conviction in a court of competent jurisdiction of this state be punishable by a fine of not less than $50 or more than $1,000 or by imprisonment in the county jail for not less than 30 days or more than 90 days or by both such fine and imprisonment.

History: En. Sec. 17, Ch. 286, L. 1959; R.C.M. 1947, 40-2617; amd. Sec. 79, Ch. 370, L. 1987; amd. Sec. 5, Ch. 606, L. 1987.

Cross-References

Administrative penalties authorized, 33-1-317.

Part 2

Definitions and Insurance Coverages

33-1-201. Definitions — insurance in general. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) An "alien insurer" is one formed under the laws of any country other than the United States, its states, districts, territories, and commonwealths.

(2) An "authorized insurer" is one duly authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(3) A "domestic insurer" is one incorporated under the laws of this state.

(4) A "foreign insurer" is one formed under the laws of any jurisdiction other than this state. Except where distinguished by context, foreign insurer includes also an alien insurer.

(5) (a) "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(b) Insurance does not include contracts for the installation, maintenance, and provision of inside telecommunications wiring to residential or business premises.

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. The term also includes a health service corporation in the provisions listed in 33-30-102.

(7) A "resident domestic insurer" is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are natural persons who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by natural persons who are residents of this state and all of the directors and officers of the insurer are residents of this state.

(8) "State", when used relating to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

(9) "Transact", with respect to insurance, includes any of the following:

(a) solicitation and inducement;

(b) preliminary negotiations;

(c) effectuation of a contract of insurance;

(d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

(10) An "unauthorized insurer" is one not authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

History: En. Secs. 2, 3, 6, 7, 8, Ch. 286, L. 1959; R.C.M. 1947, 40-2602, 40-2603, 40-2606, 40-2607, 40-2608; amd. Sec. 1, Ch. 198, L. 1979; amd. Sec. 4, Ch. 664, L. 1979; amd. Sec. 1, Ch. 202, L. 1983; amd. Sec. 2, Ch. 558, L. 1987; amd. Sec. 1, Ch. 341, L. 1989.

Cross-References

Certificate of authority, Title 33, ch. 2, part 1.

33-1-202. Definitions — entities. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) "Commissioner" means the commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, or any other legal entity.

(4) "Resident of this state" means a person who has maintained a principal residence within the state of Montana for a period of not less than 2 consecutive years.

History: En. Secs. 4, 5, Ch. 286, L. 1959; R.C.M. 1947, 40-2604, 40-2605; amd. Sec. 2, Ch. 198, L. 1979; amd. Sec. 2, Ch. 202, L. 1983.

Cross-References

Residence — rules for determining, 1-1-215.

Insurance Department, 2-15-1902.

Commissioner of Insurance — State Auditor as ex officio, 2-15-1903.

33-1-203 and 33-1-204 reserved.

33-1-205. Definitions of kinds of insurance not mutually exclusive. It is intended that certain insurance coverages may come within the definitions of two or more kinds of insurance as defined in this part, and the inclusion of such coverage within one definition shall not exclude it as to any other kind of insurance within the definition of which such coverage may likewise be reasonably included.

History: En. Sec. 72, Ch. 286, L. 1959; R.C.M. 1947, 40-2901.

Cross-References

Combinations of insuring powers — authority, 33-2-108.

Issuance or refusal of certificate of authority, 33-2-116.

33-1-206. Casualty insurance. (1) Casualty insurance includes:

(a) vehicle insurance which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom from any hazard or cause and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;

(b) liability insurance which is insurance against legal liability for the death, injury, or disability of any human being or for damage to property and provision of medical, hospital, surgical, and disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(c) workers' compensation and employer's liability which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(d) burglary and theft which is insurance against loss or damage by burglary, theft, robbery, forgery, fraud, deceptive practices, vandalism, criminal mischief, confiscation, or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(e) personal property floater which is insurance upon personal effects against loss or damage from any cause under a personal property floater;

(f) glass which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(g) boiler and machinery which is insurance against any liability and loss or damage to property or interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and from making inspection of and issuing certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(h) leakage and fire extinguishing equipment which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes, or containers or by water entering through leaks or openings in buildings and insurance against loss or damage to such sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(i) credit which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(j) malpractice which is insurance against legal liability of the insured and against loss, damage, or expense incidental to a claim of such liability, including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

(k) elevator which is insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire and from making inspection of and issuing certificates of inspection upon elevators;

(l) livestock which is insurance against loss or damage to livestock and for services of a veterinary for such animals;

(m) entertainments which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;

(n) miscellaneous which is insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this part, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

(2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury as incidental to and part of other insurance as stated under subsections (a) (vehicle), (b) (liability), (d) (burglary), and (j) (malpractice) of subsection (1) shall for all purposes be considered to be the same kind of insurance to which it is so incidental and shall not be subject to provisions of this code applicable to life or disability insurances.

History: En. Sec. 76, Ch. 286, L. 1959; amd. Sec. 49, Ch. 359, L. 1977; R.C.M. 1947, 40-2905.

Cross-References

Medical malpractice — panel to review claims, Title 27, ch. 6.

Casualty insurance — general provisions, Title 33, ch. 23, part 1.

Workers' compensation — plans for providing, Title 39, ch. 71, parts 21 through 23.

Robbery, 45-5-401.

Crimes against property, Title 45, ch. 6.

Elevators — inspection and maintenance, Title 50, ch. 60, part 7.

Boilers and boiler inspectors, Title 50, ch. 74, part 2.

33-1-207. Disability insurance. (1) Disability insurance, including credit disability insurance, is insurance of human beings:

(a) against bodily injury, disablement, or death by accident or accidental means or the medical expense or indemnity involved; or

(b) against disablement or medical expense or indemnity resulting from sickness.

(2) Transaction of disability insurance does not include workers' compensation insurance.

History: En. Sec. 74, Ch. 286, L. 1959; R.C.M. 1947, 40-2903; amd. Sec. 2, Ch. 379, L. 1995.

Cross-References

Disability insurance — general provisions, Title 33, ch. 22, part 1.

Workers' compensation insurance — general coverage and operation, Title 39, ch. 71, part 4.

33-1-208. Life insurance. Life insurance, including credit life insurance, is insurance on human lives. The transaction of life insurance includes the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, benefits that provide reimbursement or payment for long-term home health care or long-term care in a nursing home or other related institution, and optional modes of settlement of proceeds of life insurance. Transaction of life insurance does not include workers' compensation insurance.

History: En. Sec. 73, Ch. 286, L. 1959; R.C.M. 1947, 40-2902; amd. Sec. 1, Ch. 152, L. 1991; amd. Sec. 3, Ch. 379, L. 1995.

Cross-References

Life insurance — general provisions, Title 33, ch. 20.

Workers' compensation insurance — general coverage and operation, Title 39, ch. 71, part 4.

33-1-209. Marine protection and indemnity and wet marine insurance. (1) Marine and transportation insurance means insurance against loss of or damage to:

(a) vessels, craft, aircraft, vehicles, goods, freights, cargoes, merchandise, effects, disbursements, profits, money, securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia, and any interest therein, with respect to risks and perils, including war risks, marine builder's risks, and personal property floater risks, of navigation and transportation or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment, while awaiting shipment, or during any delays, storage, transshipment, or reshipment;

(b) person or property in connection with marine, transit, or transportation insurance, including liability for loss or damage to either person or property incident to the construction, repair, operation, maintenance, or use of the subject matter of the insurance, but not including life insurance, surety bonds, or insurance against bodily injury arising out of the ownership, maintenance, or use of an automobile;

(c) jewels, jewelry, or precious metals, whether in the course of transportation or otherwise; and

(d) bridges; tunnels; and other instrumentalities of transportation and communication, excluding buildings and their furnishings, fixed contents, and supplies held in storage (unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot, or civil commotion are the only hazards to be covered); piers; wharves; docks; slips; and other aids to navigation and transportation, including drydocks, marina railways, and dams and appurtenant facilities for the control of waterways.

(2) Marine protection and indemnity insurance means insurance against liability of the insured for loss, damage, or expense incident to ownership, operation, charter, maintenance, use, repair, or construction of any vessel, craft, or instrumentality for use in ocean or inland waterways. The term includes insurance against the liability of the insured for personal injury, illness, death, or loss or damage of the property of another person.

(3) For the purposes of this code, wet marine and transportation insurance is that part of marine insurance that includes only:

(a) insurance upon vessels, crafts, and hulls and of interests in or relating to the vessels, crafts, and hulls;

(b) insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;

(c) insurance of freights and disbursements pertaining to a subject of insurance subject to this subsection; and

(d) insurance of personal property and interests in the personal property, in the course of exportation from or importation into any country and in the course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, with respect to risks or perils of navigation, transit, or transportation or while being prepared for or awaiting shipment or during any delays, storage, transshipment, or reshipment incident to preparation or shipment.

History: En. Sec. 78, Ch. 286, L. 1959; R.C.M. 1947, 40-2907; amd. Sec. 11, Ch. 467, L. 1981; amd. Sec. 4, Ch. 379, L. 1995.

Cross-References

Nationwide inland marine law, 33-1-221 through 33-1-229.

33-1-210. Property insurance. Property insurance is insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage.

History: En. Sec. 75, Ch. 286, L. 1959; R.C.M. 1947, 40-2904.

Cross-References

Property insurance — general provisions, Title 33, ch. 24.

33-1-211. Surety insurance. Surety insurance includes:

(1) fidelity insurance which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) insurance indemnifying banks, bankers, brokers, or financial or moneyed corporations or associations:

(a) against check forgery or alteration or against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, or precious and semiprecious stones, including any loss while being transported in armored motor vehicles, by mail, or by messenger but not including any other risks of transportation or navigation;

(b) against loss or damage to the insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein caused by burglary, robbery, theft, or criminal mischief or any attempt thereat.

History: En. Sec. 77, Ch. 286, L. 1959; amd. Sec. 50, Ch. 359, L. 1977; R.C.M. 1947, 40-2906; amd. Sec. 3, Ch. 198, L. 1979.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

33-1-212. Title insurance. Title insurance is insurance of owners of property or others having an interest therein or liens or encumbrances thereon against loss by encumbrance, defective titles, invalidity, or adverse claim to title.

History: En. Sec. 79, Ch. 286, L. 1959; R.C.M. 1947, 40-2908.

Cross-References

Title insurance — general provisions, Title 33, ch. 25.

33-1-213. Service contract. (1) Service contract means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling.

(2) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of a service contract is exempt from the provisions of Title 33, except for:

(a) chapter 1, part 3;

(b) chapter 1, part 6, excluding 33-1-616;

(c) chapter 1, part 7; and

(d) chapter 18.

History: En. Sec. 64, Ch. 472, L. 1999.

Compiler's Comments

Effective Date: Section 73(1), Ch. 472, L. 1999, provided: "(1) Except as provided in subsections (2) and (3), [this act] [enacting this section] is effective October 1, 1999."

33-1-214. Mechanical breakdown insurance. (1) Mechanical breakdown insurance means a policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or service for the operational or structural failure of the property because of a defect in materials or workmanship or because of normal wear and tear.

(2) The term does not include motor club services, as defined in 61-12-301, or vehicle casualty insurance, as defined in 33-1-206.

History: En. Sec. 65, Ch. 472, L. 1999.

Compiler's Comments

Effective Date: Section 73(1), Ch. 472, L. 1999, provided: "(1) Except as provided in subsections (2) and (3), [this act] [enacting this section] is effective October 1, 1999."

33-1-215. Prepaid legal plan. (1) For the purposes of this section, prepaid legal plan means the assumption of a contractual obligation that is to be spread directly or indirectly among a group of persons to provide specified legal services or reimbursement for legal expenses in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiary or by a third person on behalf of the beneficiary.

(2) A prepaid legal plan does not include the provision of or reimbursement for legal services that are incidental to other insurance coverage. The following are not prepaid legal plans:

(a) retainer contracts made with individual clients with fees based on estimates of the nature and amount of services that will be required;

(b) contracts made with a group of clients involved in the same or closely related legal matters;

(c) plans providing only a referral service or a discount card for legal services;

(d) legal services provided by unions or employee associations to members pertaining to employment or occupation; or

(e) legal services provided by an agency of state or federal government to employees.

History: En. Sec. 66, Ch. 472, L. 1999.

Compiler's Comments

Effective Date: Section 73(2), Ch. 472, L. 1999, provided: "(2) [Sections 1 through 4, 31, 66 [enacting this section], and 70 through 72 and this section] are effective on passage and approval." Approved April 27, 1999.

33-1-216. Involuntary unemployment insurance. Involuntary unemployment insurance means insurance providing the insured borrower with coverage for consumer credit replacement obligations for a period or periods during which the borrower is involuntarily unemployed. Involuntary unemployment insurance must at least provide benefits for the loss of employment income caused by individual or mass layoff, a general strike, termination by an employer, a dispute involving organized labor, and a lockout.

History: En. Sec. 67, Ch. 472, L. 1999.

Compiler's Comments

Effective Date: Section 73(1), Ch. 472, L. 1999, provided: "Except as provided in subsections (2) and (3), [this act] [enacting this section] is effective October 1, 1999."

33-1-217. Gap amount — gap insurance. (1) As used in this section, gap amount means the difference between the amount owed by the lessee or borrower under the purchase or lease agreement in the event of total loss of the personal property prior to the expiration of the agreement by theft or physical damage and the actual cash value or portion received by the lessor or creditor from insurance proceeds or from any other person on account of the total loss or destruction of the personal property.

(2) Gap insurance means insurance covering the gap amount that is payable upon the total loss of personal property, which is the subject of a lease or a loan or

another credit transaction, occasioned by the theft of or physical damage to the property.

History: En. Sec. 68, Ch. 472, L. 1999.

Compiler's Comments

Effective Date: Section 73(1), Ch. 472, L. 1999, provided: "Except as provided in subsections (2) and (3), [this act] [enacting this section] is effective October 1, 1999."

33-1-218 through 33-1-220 reserved.

33-1-221. Nationwide inland marine definition law. Sections 33-1-221 through 33-1-229 may be cited as the "Nationwide Inland Marine Definition Act".

History: En. Sec. 1, Ch. 467, L. 1981.

33-1-222. Purpose. (1) The purpose of 33-1-221 through 33-1-229 is to describe the kinds of risks and coverages which may be classified or identified under state insurance laws as marine, inland marine, or transportation insurance, but 33-1-221 through 33-1-229 do not include all of the kinds of risks and coverages which may be written, classified, or identified under marine, inland marine, or transportation insuring powers. Sections 33-1-221 through 33-1-229 may not be construed to mean that the kinds of risks and coverages described herein are solely marine, inland marine, or transportation insurance in all instances.

(2) Sections 33-1-221 through 33-1-229 may not be construed to restrict or limit in any way the exercise of any insuring powers granted under charters and licenses whether used separately, in combination, or otherwise.

History: En. Sec. 2, Ch. 467, L. 1981.

33-1-223. Imports. Imports may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Imports are covered wherever they are located, without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

(2) Property is an import and the proper subject of marine, inland marine, or transportation insurance as long as the property remains segregated in such a way that it can be identified and has not become incorporated into and mixed with the general mass of property in the United States; property ceases to be an import and the proper subject of marine, inland marine, or transportation insurance when it has been:

(a) sold and delivered by the importer, factor, or consignee;

(b) removed from its place of storage and placed on sale as part of an importer's stock in trade at a point of sale or distribution; or

(c) delivered for manufacture, processing, or change in form to premises of the importer or another, to be used for such purposes.

History: En. Sec. 3, Ch. 467, L. 1981.

33-1-224. Exports. Exports may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Exports are covered wherever they are located, without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

(2) Property is an export and the proper subject of marine, inland marine, or transportation insurance when designated or while being prepared for export and remains an export unless diverted for domestic trade. If the property is diverted for domestic trade, the provisions of 33-1-225 apply. This section does not apply to long-established methods of insuring certain commodities such as cotton.

History: En. Sec. 4, Ch. 467, L. 1981.

33-1-225. Domestic shipments. Domestic shipments may be covered by marine, inland marine, and transportation policies subject to the following conditions:

(1) Domestic shipments on consignment for sale, distribution, exhibit, trial, approval, or auction may be covered while in transit, while in the custody of others, and while being returned, except that the policy may not cover property while it is on premises owned, leased, or operated by the consignor.

(2) Domestic shipments not on consignment may be covered if the coverage of the issuing companies includes hazards of transportation beginning and ending within the United States. Such shipments are not covered at the manufacturing premises or after arrival at premises owned, leased, or operated by the assured or the purchaser.

History: En. Sec. 5, Ch. 467, L. 1981.

33-1-226. Instrumentalities of transportation and commerce. Bridges, tunnels, and other instrumentalities of transportation and communication (excluding buildings and improvements, furniture, furnishings, fixed contents, and supplies held in storage) may be covered by marine, inland marine, and transportation policies. This category includes:

(1) bridges, tunnels, and other similar instrumentalities, including auxiliary facilities and equipment attendant thereto;

(2) piers, wharves, docks, slips, drydocks, and marine railways;

(3) pipelines, including on-line propulsion, regulating, and other equipment appurtenant to such pipelines but excluding all property at manufacturing, producing, refining, converting, treating, or conditioning plants;

(4) power transmission, telephone, and telegraph lines, excluding all property at generating, converting, or transforming stations, substations, and exchanges;

(5) radio and television communication equipment in use as such, including towers and antennas with auxiliary equipment, and appurtenant electrical operating and control apparatus; and

(6) outdoor cranes, loading bridges, and similar equipment used to load, unload, and transport.

History: En. Sec. 6, Ch. 467, L. 1981.

33-1-227. Personal property. Risks generally covered by personal property floaters covering individuals or items of personal property may be covered by marine, inland marine, and transportation policies. This category includes:

(1) personal effects floater policies;

(2) personal property floaters;

(3) government service floaters;

(4) personal fur floaters;

(5) personal jewelry floaters;

(6) wedding present floaters for a period not exceeding 90 days after the date of the wedding;

(7) silverware floaters;

(8) fine arts floaters covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit;

(9) stamp and coin floaters;

(10) musical instrument floaters. For purposes of this section, radios, televisions, record players, and combinations thereof are not musical instruments.

(11) mobile articles, machinery, and equipment floaters (excluding motor vehicles designed for highway use and motor homes, trailers, and semitrailers except when hauled by tractors not designed for highway use) covering identified property of a mobile or floating nature pertaining to or usual to a household. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.

(12) installment sales and leased property policies covering property pertaining to a household and sold under conditional contract of sale, partial payment contract, or installment sales contract or leased but excluding motor vehicles designed for highway use. Such policies must cover property in transit but shall not extend beyond the termination of the seller's or lessor's interest; and

(13) live animal floaters.

History: En. Sec. 7, Ch. 467, L. 1981.

33-1-228. Commercial property. Risks generally covered by commercial property floaters covering property pertaining to a business, profession, or occupation may be covered by marine, inland marine, and transportation policies. This category includes:

(1) radium floaters;

(2) physicians' and surgeons' instrument floaters. Such policies may include coverage of such furniture, fixtures, and tenant assured's interest in such improvements of buildings as are located in that portion of the premises occupied by the assured in the practice of his profession.

(3) pattern and die floaters;

(4) theatrical floaters, excluding buildings and improvements, furniture, and fixtures that do not travel about with theatrical troupes;

(5) film floaters, including a builders' risk during the production and coverage on completed negatives, positives, and sound records;

(6) salesmen's samples floaters;

(7) exhibition policies on property while it is on exhibition and in transit to or from such exhibitions;

(8) live animal floaters;

(9) builders' risks and installation risks policies covering the interest of owner, seller, or contractor against loss or damage to machinery, equipment, building materials, or supplies being used with and during the course of installation, testing, building, renovating, or repairing. These policies may cover property at points or places where work is being performed, while in transit, and during temporary storage or deposit of property designated for an awaiting specific installation, building, renovating, or repairing. Such coverage is limited to builders' risks or installation risks where perils in addition to fire and extended coverage are to be insured. If written for the account of the owner, the coverage ceases upon completion of work and acceptance thereof; or if written for the account of a seller or contractor, the coverage terminates when the interest of the seller or contractor terminates.

(10) mobile articles, machinery, and equipment floaters (excluding motor vehicles designed for highway use and motor homes, trailers, and semitrailers except when hauled by tractors not designed for highway use, and snowplows constructed exclusively for highway use) covering identified property of a mobile or floating nature, not on sale or consignment or in the course of manufacture, that has come into custody or control of parties who intend to use such property for which it was manufactured or created. Such policies may not cover furniture and fixtures not customarily used away from premises where such property is usually kept.

(11) property in transit to or from and in the custody of bailees (not owned, controlled, or operated by the bailor), but such policies may not cover the bailee's property at his premises;

(12) installment sales and leased property policies covering property sold under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. These policies must cover property in transit but may not extend beyond the termination of the

seller's or lessor's interest. This subsection does not include machinery and equipment under certain "lease-back" contracts.

(13) garment contracts' floaters;

(14) furriers' or fur storers' customer's policies, which are policies under which certificates or receipts are issued by furriers or fur storers, covering specified articles that are the property of customers;

(15) accounts receivable policies and valuable papers and records policies;

(16) floor plan policies, covering property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a bank or lending institution to pay the manufacturer, if:

(a) the merchandise is specifically identifiable as encumbered to the bank or lending institution;

(b) the dealer's right to sell or otherwise dispose of the merchandise is conditioned upon its being released from encumbrance by the bank or lending institution; and

(c) the policies cover property in transit and do not extend beyond the termination of the dealer's interest;

(17) sign and street clock policies, including neon signs, automatic or mechanical signs, and street clocks, while in use as such;

(18) fine arts policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit, for account of museums, galleries, universities, businesses, municipalities, and other similar interests;

(19) policies covering personal property, which may include coverage of money in locked safes or vaults on the assured's premises and may also include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies, and a tenant insured's interest in improvements of buildings, which when sold to the ultimate purchaser may be covered specifically by the owner under inland marine policies including:

(a) musical instrument dealers' policies, covering property consisting principally of musical instruments and their accessories, but radios, televisions, record players, and combinations of them are not musical instruments for the purposes of this subsection;

(b) camera dealers' policies covering property consisting principally of cameras and their accessories;

(c) furrier dealers' policies covering property consisting principally of furs and fur garments;

(d) equipment dealers' policies covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders, and other similar agricultural equipment and accessories therefor; construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories therefor, but excluding motor vehicles designed for highway use;

(e) stamp and coin dealers' policies covering property of philatelic and numismatic nature;

(f) jewelers' block policies; and

(g) fine arts dealers' policies;

(20) wool growers' floaters;

(21) domestic bulk liquids policies covering tanks and domestic bulk liquids stored therein;

(22) "difference in conditions" coverage, excluding fire and extended coverage perils; and

(23) electronic data processing policies.

History: En. Sec. 8, Ch. 467, L. 1981.

33-1-229. Exceptions. Unless otherwise permitted, nothing in 33-1-223 through 33-1-229 may be construed to permit marine, inland marine, or transportation insurance policies to cover:

(1) storage of an assured's merchandise, except as specifically provided;

(2) merchandise in the course of manufacture which is the property of and on the premises of the manufacturer;

(3) furniture, fixtures, and improvements to buildings; or

(4) money or securities in safes, vaults, safety deposit vaults, or banks or on the assured's premises, except while in the course of transportation.

History: En. Sec. 9, Ch. 467, L. 1981.

Part 3

Commissioner and Department General Powers and Duties

Part Cross-References

Jurisdiction of courts, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

33-1-301. Insurance department — control — appropriations. (1) The insurance department shall be under the control and supervision of the commissioner.

(2) Funds adequate for the maintenance and operation of the insurance department shall be expressly appropriated by the legislature and shall be used solely for the purposes for which so appropriated.

History: En. Sec. 21, Ch. 286, L. 1959; R.C.M. 1947, 40-2702(2), (3).

Cross-References

Insurance Department — creation, 2-15-1902.

State Auditor — ex officio Insurance Commissioner, 2-15-1903.

33-1-302. Commissioner's seal. (1) The commissioner shall have a seal of office consisting of the same symbolic design within the inner circle as the great seal of the state of Montana, encircled by the words "Commissioner of Insurance, State of Montana".

(2) All certificates and licenses issued by the commissioner shall bear his seal, except that the commissioner may, in his discretion, omit the seal as to licenses.

History: En. Sec. 22, Ch. 286, L. 1959; R.C.M. 1947, 40-2703.

Cross-References

The Great Seal of the State of Montana — description, 1-1-501.

33-1-303. Deputies and assistants — employment, compensation, and termination. (1) The commissioner shall appoint a chief deputy insurance commissioner who is in charge of the insurance department under the direction and control of the commissioner.

(2) The commissioner may appoint additional deputy insurance commissioners for the purposes that the commissioner designates.

(3) The commissioner may employ a competent insurance actuary to perform actuarial duties, if any, of the department, to take charge of or assist in the examination of insurers, and to perform other duties assigned to the commissioner.

(4) The commissioner may appoint or employ examiners to conduct or assist in examinations of insurers and others provided for under the code. Examiners

must be competent, because of experience or special education or training, to fulfill the responsibilities of an insurance examiner.

(5) The commissioner shall appoint or employ insurance protection analysts for the purpose of ensuring that insurers and their representatives comply with market regulations provided by law.

(6) The commissioner may appoint and employ a field investigator whose primary duty it is, as directed by the commissioner, to make investigations in this state of violations or claimed violations of this code.

(7) The commissioner may appoint a chief clerk for the insurance department and employ other assistants and clerks as may be necessary to assist the commissioner properly to discharge the duties imposed under this code.

(8) The commissioner may at any time terminate the appointment, designation, or employment of any deputy, actuary, chief clerk, or other employee.

(9) The commissioner may from time to time contract for and procure, on a fee or part-time basis, or both, actuarial, technical, or other professional services as the commissioner may require for the discharge of duties.

(10) The compensation of the commissioner's personal staff, as defined in Title 2, chapter 18, part 1, shall be as fixed by the commissioner but in the aggregate may not exceed current funds appropriated by the legislature to the insurance department or otherwise currently available for the purpose.

History: En. Sec. 23, Ch. 286, L. 1959; R.C.M. 1947, 40-2704; amd. Sec. 1, Ch. 4, L. 1979; amd. Sec. 4, Ch. 198, L. 1979; amd. Sec. 1, Ch. 165, L. 1993.

Cross-References

Deputies of public officers, Title 2, ch. 16, part 3.

State employee classification, compensation, and benefits, Title 2, ch. 18.

Personal staff, 2-18-104.

33-1-304. Delegation of authority — responsibility. (1) The commissioner may delegate to any deputy, assistant, examiner, or employee of his department the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial or discretionary, vested by this code in the commissioner.

(2) The commissioner shall be responsible for the official acts of his deputy, assistant, examiner, or employee acting in the commissioner's name and by his authority.

History: En. Sec. 25, Ch. 286, L. 1959; R.C.M. 1947, 40-2706.

Cross-References

Powers of deputies, 2-16-303.

33-1-305. Conflicts of interest and certain compensation prohibited. (1) The commissioner or any deputy, examiner, assistant, or employee of the commissioner shall not be financially interested, directly or indirectly, in any insurer, insurance agency, or insurance transaction except as a policyholder or claimant under a policy.

(2) The commissioner or any deputy, examiner, or employee of the commissioner shall not be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service rendered or to be rendered as such commissioner, deputy, examiner, or employee or in connection therewith.

History: En. Sec. 24, Ch. 286, L. 1959; R.C.M. 1947, 40-2705(part).

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Interest in certain contracts — prohibition, 2-2-201.

Official misconduct — crime, 45-7-401.

33-1-306. Dual contracts permitted. As to such matters wherein a conflict of interest does not exist on the part of any such individual, the commissioner may employ or retain from time to time insurance actuaries, attorneys, or other technicians who are independently practicing their professions even though similarly employed or retained by insurers or others.

History: En. Sec. 24, Ch. 286, L. 1959; R.C.M. 1947, 40-2705(part).

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

33-1-307 through 33-1-310 reserved.

33-1-311. General powers and duties. (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) The commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) an insurance department from another state that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to the national association of insurance commissioners, a state or federal law enforcement agency, or an insurance department in another state, if the recipient agrees to maintain the confidentiality of the information or documents.

(6) The department is a criminal justice agency as defined in 44-5-103.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969; R.C.M. 1947, 40-2709(1) thru (3), (5); amd. Sec. 1, Ch. 99, L. 1989; amd. Sec. 2, Ch. 165, L. 1993; amd. Sec. 5, Ch. 379, L. 1995; amd. Sec. 10, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 inserted (5) regarding confidentiality of information; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Deductible insurance plan for state buildings — cooperation, 2-17-104.

Fire departments — report, 19-18-511.

Development credit corporations — report, 32-4-306.

License required of health service corporations, 33-30-108.

Inheritance and estate tax valuations, 72-16-417.

33-1-312. Records and certificates. (1) The commissioner shall enter in permanent form records of his official transactions, examinations, investigations, and proceedings and keep such records in his office. Such records and insurance filings in his office shall be open to public inspection except as otherwise provided in this code with respect to particular records or filings.

(2) When required, the commissioner shall furnish his certificate as to the authority of any person to transact insurance, and such certificate shall be evidence of the facts set forth therein.

(3) Copies of records or documents in his office certified to by the commissioner shall be received in evidence in all courts as if they were the originals.

History: (1)En. Sec. 26, Ch. 286, L. 1959; Sec. 40-2707, R.C.M. 1947; (2), (3)En. Sec. 27, Ch. 286, L. 1959; Sec. 40-2708, R.C.M. 1947; R.C.M. 1947, 40-2707, 40-2708.

Cross-References

Records of officers — public inspection allowed, 2-6-104.

Evidence consisting of public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

33-1-313. Rules — notice, hearing, and penalty. (1) The commissioner may make reasonable rules necessary for or as an aid to effectuation of any provision of this code. No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703. If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days.

(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates.

History: En. Sec. 29, Ch. 286, L. 1959; R.C.M. 1947, 40-2710; amd. Sec. 80, Ch. 370, L. 1987; amd. Sec. 6, Ch. 606, L. 1987.

Cross-References

Applicability of MAPA to agencies, 2-3-102, 2-4-102.

Montana Administrative Procedure Act (MAPA), Title 2, ch. 4.

Rules for organization or procedure of agency, 2-4-201.

Notice and hearing for rule adoption, 2-4-302.

Requisites for validity of rule, 2-4-305.

Publication of rule required, 2-4-306.

Administrative penalties, 33-1-317.

Ten days' notice required, 33-1-703.

Discrimination prohibited — nongender insurance law, 49-2-309.

33-1-314. Orders and notices. (1) Orders and notices of the commissioner shall not be effective unless in writing signed by him or by his authority.

(2) Every such order shall state its effective date and shall concisely state:

(a) its intent or purpose;

(b) the grounds on which based;

(c) the provisions of this code pursuant to which action is so taken or proposed to be taken, but failure to so designate a particular provision shall not deprive the commissioner of the right to rely thereon.

(3) Except as may be provided in this code respecting particular procedures, an order or notice may be given by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to him at his principal place of business as last of record in the commissioner's office. Such order or notice shall be deemed to have been given when so mailed.

History: En. Sec. 30, Ch. 286, L. 1959; R.C.M. 1947, 40-2711.

33-1-315. Witnesses — production of records — subpoena — failure to respond — perjury. (1) With respect to the subject of any examination, investigation, or hearing being conducted by him, the commissioner or his examiner, if general written authority has been given the examiner by the commissioner, may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. If in connection with any examination of an insurer the commissioner desires to examine any officer, director, or manager thereof who is then outside this state, the commissioner may conduct and enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States in which such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(2) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized and shall be paid by the person being examined if such person is found to have been in violation of the law as to the matter with respect to which such witness was subpoenaed or by the person, if other than the commissioner, at whose request the hearing is held.

(3) Subpoenas of witnesses shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully served, the commissioner shall report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court for the county in which the individual was required to appear. Such court shall cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.

(4) Any person knowingly failing to attend, answer, or produce records, documents, or other evidence requested by the commissioner or who knowingly fails to give the commissioner full and truthful information and answer in writing to any material written inquiry of the commissioner, relative to the subject of any such examination, investigation, or hearing, or knowingly fails to appear and testify under oath before the commissioner is guilty of a misdemeanor.

(5) Any person knowingly testifying falsely under oath as to any matter material to any such examination, investigation, or hearing is guilty of perjury, and upon conviction shall be punished according to 45-7-201.

History: En. Sec. 37, Ch. 286, L. 1959; R.C.M. 1947, 40-2718; amd. Sec. 5, Ch. 198, L. 1979.

Cross-References

Travel allowance — mileage, 2-18-503, 2-18-504.

Production of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Subpoena of witnesses, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Disobedience of subpoena, 26-2-104.

Witness fees, Title 26, ch. 2, part 5.

Perjury — crime, 45-7-201.

Misdemeanor, 46-18-212.

33-1-316. Testimony compelled — immunity from prosecution. A person may not be excused from attending and testifying or producing any evidence upon any examination, investigation, or hearing conducted by or under authority of the commissioner on the ground that the person's testimony or the evidence required may tend to incriminate or subject the person to a penalty or forfeiture. However, testimony or evidence compelled following a claim of privilege against self-incrimination or any information directly or indirectly derived from compelled testimony or evidence may not be used against the person in a criminal prosecution. The commissioner may grant immunity from prosecution for or on account of any act, occurrence, transaction, matter, or other thing concerning which a person testifies if the commissioner determines that the ends of justice would be served by granting the additional immunity. Immunity does not extend to prosecution or punishment for false statements by the person that are contained in testimony or evidence given under this part.

History: En. Sec. 38. Ch. 286, L. 1959; R.C.M. 1947, 40-2719; amd. Sec. 1, Ch. 246, L. 1991; amd. Sec. 1, Ch. 451, L. 1993.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

33-1-317. Penalty imposed by commissioner. The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of $25,000 upon a person found to have violated a provision of this code or regulation promulgated by the commissioner, except that the fine imposed upon insurance producers or adjusters may not exceed $5,000 per violation. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana. Imposition of a fine under this section is an order from which an appeal may be taken, pursuant to the provisions of 33-1-711.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969; R.C.M. 1947, 40-2709(4); amd. Sec. 1, Ch. 278, L. 1987; amd. Sec. 81, Ch. 370, L. 1987; amd. Sec. 7, Ch. 606, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 1, Ch. 164, L. 1993.

Cross-References

Appeal — Lewis and Clark County District Court, 33-1-711.

Offenses without criminal intent — limitation, 45-2-104.

33-1-318. Injunctions and other remedies. (1) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of 33-1-501; 33-14-201; chapters 2, 16 through 18, and 30 of this title; or part 4 of chapter 25 of this title; or any rule or order issued under this code, he may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing;

(b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must be held within 20 days of the commissioner's receipt of the hearing request unless the time is extended by agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final.

(c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with this code or any rule or order issued under this code. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

(2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed findings of fact, conclusions of law, orders, and supporting briefs to the hearing examiner. The parties have an additional 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law, orders, and briefs. A final order must issue within 30 days of the submission of the comments.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in an act or practice constituting a violation of a provision of this code or any rule or order issued under this code. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of a fine under this subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of that person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of his right to do business in this state under this code.

History: En. Sec. 1, Ch. 513, L. 1987.

Part 4

Examinations by Department

33-1-401. Examination of insurers. (1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as the commissioner considers advisable. The commissioner shall examine each authorized insurer not less frequently than every 5 years.

(2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(3) In lieu of making an examination under this part of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. After January 1, 1994, the reports may only be accepted if:

(a) the insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

(b) the examination is performed under the supervision of an accredited state insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(4) For purposes of completing an examination of any company under this part, the commissioner may examine or investigate any person or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

History: En. Sec. 32, Ch. 286, L. 1959; R.C.M. 1947, 40-2713; amd. Sec. 39, Ch. 596, L. 1993.

Cross-References

Certificates of authority, Title 33, ch. 2, part 1.

33-1-402. Examination of insurance producers, managers, and promoters. For the purpose of ascertaining compliance with this code, the commissioner may, as often as he considers advisable, examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) an insurance producer, surplus lines insurance producer, general insurance producer, or adjuster;

(2) a person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) a person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management of the domestic insurer, as voting trustee or otherwise;

(4) a person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business.

History: En. Sec. 33, Ch. 286, L. 1959; R.C.M. 1947, 40-2714; amd. Sec. 22, Ch. 537, L. 1987; amd. Sec. 7, Ch. 713, L. 1989.

33-1-403. Repealed. Sec. 71, Ch. 596, L. 1993.

History: En. Sec. 34, Ch. 286, L. 1959; R.C.M. 1947, 40-2715; amd. Sec. 1, Ch. 713, L. 1989.

33-1-404 through 33-1-407 reserved.

33-1-408. Conduct of examinations — records — correction of accounts — appraisals. (1) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe the guidelines and procedures set forth in the examiners' handbook adopted by the NAIC. The commissioner may also employ other guidelines or procedures as the commissioner considers appropriate.

(2) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners is grounds for suspension, refusal, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. A proceeding for suspension, revocation, or refusal of any license or authority must be conducted pursuant to 33-1-318.

(3) The commissioner or any examiner has the power to issue subpoenas, administer oaths, and examine under oath any person concerning any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or to produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(4) When making an examination under this part, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of retaining the personnel must be borne by the company that is the subject of the examination.

(5) This part may not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to this title. Findings of fact and conclusions made pursuant to an examination are prima facie evidence in any legal or regulatory action.

(6) This part may not be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may consider appropriate.

History: En. Sec. 31, Ch. 596, L. 1993.

33-1-409. Examination reports — hearings — confidentiality — publication. (1) All examination reports must be composed only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

(b) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, information, or testimony and of refiling pursuant to subsection (2); or

(c) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional data, documentation, information, and testimony.

(4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. An order must be considered a final administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized representative must be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order pursuant to subsection (3)(a).

(ii) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of witnesses or the production of documents considered relevant to the investigation, whether under the control of the department, the company, or other persons. The documents produced must be included in the record, and testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record. This section does not require the department to disclose any information or records that would indicate or show the existence or content of an investigation or activity of a criminal justice agency.

(iii) The hearing must proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. The company and the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The company and the department must be permitted to make closing statements and may be represented by counsel of their choice.

(5) (a) Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days, except to the extent provided in subsection (2). After 30 days, the commissioner shall open the report for public inspection as long as a court of competent jurisdiction has not stayed its publication.

(b) This title does not prevent and may not be construed as prohibiting the commissioner from disclosing the content of an examination report or preliminary examination report, the results of an examination, or any matter relating to a report or results to the insurance department of this state or of any other state or country, to law enforcement officials of this state or of any other state, or to an agency of the federal government at any time as long as the agency or office receiving the report or matters relating to the report agrees in writing to hold it in a manner consistent with this part.

(c) If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions as provided by law.

(6) All working papers, confidential criminal justice information, as defined in 44-5-103, personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege obtained by or disclosed to the commissioner or any other person in the course of an examination made under this part must be given confidential treatment, are not subject to subpoena, and may not be made public by the commissioner or any other person, except to the extent provided in subsection (5). Access may also be granted to the NAIC. The persons given access to confidential criminal justice information, trade secrets, and personal information shall agree in writing, prior to receiving the information, to treat the information in the manner required by this section unless the prior written consent of the company to which it pertains has been obtained.

History: En. Sec. 32, Ch. 596, L. 1993; amd. Sec. 6, Ch. 416, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 416 in second sentence in (4)(b)(iii) substituted "may" for "must"; in second sentence in (5)(a) substituted "shall" for "may"; near end of (5)(b) after "hold it" deleted "confidential and"; in first sentence in (6) after "papers" substituted language regarding confidential criminal justice information, personal information, and trade secrets specifically identified and for which reasonable privilege grounds asserted for former language that read: "recorded information, documents, and copies produced by" and in third sentence after "access" inserted "to confidential criminal justice information, trade secrets, and personal information" and before "manner" deleted "confidential"; and made minor changes in style. Amendment effective October 1, 1999.

33-1-410. Conflict of interest. (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest with, is affiliated with the management of, or owns a pecuniary interest in any person subject to examination under this part. This section may not be construed to automatically preclude an examiner from being:

(a) a policyholder or claimant under an insurance policy;

(b) a grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(c) an investment owner in shares of regulated diversified investment companies; or

(d) a settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

(2) Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other individuals who are independently practicing their professions, even though the persons may from time to time be similarly employed or retained by persons subject to examination under this part.

History: En. Sec. 33, Ch. 596, L. 1993.

33-1-411. Destruction of records — hindrance of examination — penalty. A director, officer, agent, or employee of a company who for the purpose of hindering any examination conducted pursuant to this part destroys any books, records, or documents required to be kept by law shall be punished by a fine as provided in 33-1-317. After notice and hearing in accordance with Title 33, chapter 1, part 7, the commissioner may revoke the certificate of authority of the company.

History: En. Sec. 35, Ch. 286, L. 1959; amd. Sec. 1, Ch. 28, L. 1967; R.C.M. 1947, 40-2716(3); amd. Sec. 6, Ch. 198, L. 1979; amd. Sec. 11, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 at end of first sentence after "fine" substituted "as provided in 33-1-317" for "of not more than $1,000"; and made minor changes in style. Amendment effective October 1, 1999.

33-1-412. Repealed. Sec. 71, Ch. 596, L. 1993.

History: En. Sec. 35, Ch. 286, L. 1959; amd. Sec. 1, Ch. 28, L. 1967; R.C.M. 1947, 40-2716(1), (2), (4) thru (7).

33-1-413. Examination expense — lien. (1) Upon presentation of a detailed account of charges and expenses by the commissioner or pursuant to the commissioner's written authorization, each person examined, other than examinations pursuant to 33-1-402, shall pay the actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners as necessarily incurred on account of the examination, all at reasonable rates as established or adopted by the commissioner. An account may be presented periodically during the course of the examination or at the termination of the examination as the commissioner considers proper. A person may not pay and an examiner may not accept any additional emolument on account of an examination.

(2) The commissioner shall pay to the state treasurer to the credit of the state special revenue fund all money received pursuant to subsection (1).

(3) If a person fails to pay the charges and expenses, as referred to in subsection (1), the charges and expenses must be paid out of the funds of the commissioner in the same manner as other disbursements of the funds. The amount paid is a first lien upon all of the assets and property in this state of the person and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund.

History: En. Sec. 36, Ch. 286, L. 1959; amd. Sec. 72, Ch. 147, L. 1963; R.C.M. 1947, 40-2717; amd. Sec. 96, Ch. 379, L. 1995.

Cross-References

Attorney General — duties, 2-15-501.

Examination of insurance producers, managers, and promoters, 33-1-402.

Liens — definition, 71-3-101.

Ordering of liens, 71-3-115.

Part 5
Approval of Forms

Part Cross-References

Motor club service companies — approval of service contract forms, 61-12-308.

33-1-501. Filing and approval of forms. (1) (a) An insurance policy or annuity contract form, certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form has been filed with and approved by the commissioner and, if required, the regulatory official of the state of domicile of the insurer. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Forms for use in property, marine, other than ocean marine and foreign trade coverages, casualty, and surety insurance coverages may be filed by a rating organization on behalf of its members and subscribers or by a member or subscriber on its own behalf.

(b) The approval of an insurance policy or annuity contract form, certificate, enrollment form, application form, or other related insurance form by the state of domicile may be waived by the commissioner if the commissioner considers the requirements of subsection (1)(a) unnecessary for the protection of Montana insurance consumers. If the requirement is waived, an insurer shall notify the commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form by the state of domicile.

(2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than an additional 60 days the period within which the commissioner may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any approval.

(3) Notice by the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer.

(4) The commissioner may exempt from the requirements of this section, for so long as the commissioner considers proper, an insurance document, form, or type of document or form to which, in the commissioner's opinion, this section may not practicably be applied or the filing and approval of which are not desirable or necessary for the protection of the public.

(5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

(6) This section and 33-1-502 do not apply to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon request. The certificates must meet the minimum provisions mandated by Montana if Montana law prevails over conflicting provisions of other state law.

History: En. Secs. 258, 271, Ch. 286, L. 1959; R.C.M. 1947, 40-3701(part), 40-3714; amd. Sec. 1, Ch. 303, L. 1981; amd. Sec. 1, Ch. 518, L. 1983; amd. Sec. 1, Ch. 156, L. 1989; amd. Sec. 2, Ch. 451, L. 1993; amd. Sec. 6, Ch. 379, L. 1995.

Cross-References

Rating organization — definition, 33-16-102.

33-1-502. Grounds for disapproval. The commissioner shall disapprove any form filed under 33-1-501 or withdraw any previous approval thereof only if the form:

(1) is in any respect in violation of or does not comply with this code;

(2) contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract, including a provision in a casualty insurance form permitting defense costs within limits, except as permitted by the commissioner in his discretion;

(3) has any title, heading, or other indication of its provisions which is misleading;

(4) is printed or otherwise reproduced in such manner as to render any provision of the form substantially illegible;

(5) contains any provision that violates the provisions of 49-2-309.

History: En. Sec. 272, Ch. 286, L. 1959; R.C.M. 1947, 40-3715; amd. Sec. 1, Ch. 122, L. 1987; amd. Sec. 10, Ch. 699, L. 1991.

Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Language simplification requirements, 33-15-321 through 33-15-329.

Part 6

Service of Process

33-1-601. Commissioner — attorney for service of process. (1) Each insurer applying for authority to transact insurance in this state shall appoint the commissioner and his successors in office as its attorney to receive service of legal process issued against it in Montana. The appointment shall be made on a form as designated and furnished by the commissioner. The appointment shall be irrevocable, shall bind the insurer and any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in Montana any contract made by the insurer or obligations arising therefrom.

(2) Each insurer at time of application for a certificate of authority shall file with the commissioner designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

History: En. Sec. 63, Ch. 286, L. 1959; R.C.M. 1947, 40-2818(1), (3).

33-1-602. Service of process — foreign, alien, or domestic. Service of such process against a foreign or alien insurer shall be made only by service of process upon the commissioner or upon a deputy or other person in charge of his office during his absence. Service of process against a domestic insurer may be made either upon the commissioner or upon the insurer corporation in the manner provided by laws applying to corporations generally or upon the insurer's attorney-in-fact if a domestic reciprocal insurer.

History: En. Sec. 63, Ch. 286, L. 1959; R.C.M. 1947, 40-2818(2).

Cross-References

Service upon corporation, Rule 4D(2)(e), M.R.Civ.P. (see Title 25, ch. 20).

Attorney-in-fact — reciprocal insurer, 33-5-104, 33-5-201.

33-1-603. Serving process — time to plead. (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney, pursuant to 33-1-601, shall be served upon the commissioner or upon his deputy or other person in charge of his office during his absence. At the time of service, the plaintiff shall pay to the commissioner $10, taxable as costs in the action. Upon receiving such service, the commissioner shall promptly forward a copy thereof by certified or registered mail to the person last so designated by the insurer to receive the same.

(2) Where process is served upon the commissioner as an insurer's attorney, the insurer shall have 30 days within which to appear, answer, or plead after date of mailing of the copy thereof by the commissioner, exclusive of date of mailing, as provided by subsection (1).

(3) Process served upon the commissioner and copy thereof forwarded as in this section provided shall constitute service thereof upon the insurer.

History: En. Sec. 64, Ch. 286, L. 1959; amd. Sec. 1, Ch. 321, L. 1977; R.C.M. 1947, 40-2819.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

33-1-604 through 33-1-610 reserved.

33-1-611. Unauthorized Insurers Process Act — interpretation. (1) Sections 33-1-611 through 33-1-616 constitute and may be cited as the "Unauthorized Insurers Process Act".

(2) Such act shall be so interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 178, Ch. 286, L. 1959; R.C.M. 1947, 40-3403.

Cross-References

Suits by unauthorized insurers prohibited, 33-2-105.

Actions against insurer — venue — service of process, 33-2-314.

33-1-612. Commissioner — process agent for unauthorized insurer doing business in state. Delivery, effectuation, or solicitation of any insurance contract, by mail or otherwise, within this state by an unauthorized insurer, or the performance within this state of any other service or transaction connected with such insurance by or on behalf of such insurer, shall be deemed to constitute an appointment by such insurer of the commissioner and his successors in office as its attorney, upon whom may be served all lawful process issued within this state in any action or proceeding against such insurer arising out of any such contract or transaction, and shall be deemed to signify the insurer's agreement that any such service of process shall have the same legal effect and validity as personal service of process upon it in this state.

History: En. Sec. 179, Ch. 286, L. 1959; R.C.M. 1947, 40-3404.

33-1-613. Service of process — criteria mandating designation of commissioner. (1) Service of process upon any such insurer pursuant to 33-1-612 shall be made by delivering to and leaving with the commissioner or some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The commissioner shall forthwith mail by registered or certified mail one of the copies of such process to the defendant at its principal place of business last known to the commissioner and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered or certified mail by plaintiff's attorney to the defendant at its last known principal place of business and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(2) Service of process in any such action, suit, or proceeding shall in addition to the manner provided in subsection (1) of this section be valid if:

(a) served upon any person within this state who in this state on behalf of such insurer is:

(i) soliciting insurance;

(ii) making any contract of insurance or issuing or delivering any policies or written contracts of insurance; or

(iii) collecting or receiving any premium for insurance;

(b) a copy of such process is sent within 10 days thereafter by registered or certified mail by the plaintiff's attorney to the defendant at the last known principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(3) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(4) Nothing in this section contained shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

History: En. 40-3405 by Sec. 180, Ch. 286, L. 1975; R.C.M. 1947, 40-3405.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

Fee for Commissioner's service of process, 33-1-603.

33-1-614. Exemptions from service of process provisions. Sections 33-1-611 through 33-1-613 shall not apply to:

(1) surplus lines insurance lawfully effectuated under part 3, chapter 2;

(2) reinsurance; or

(3) any action or proceeding against an unauthorized insurer arising out of:

(a) wet marine and transportation insurance;

(b) insurance on or with respect to subjects located, resident, or to be performed wholly outside this state or on or with respect to vehicles or aircraft owned and principally garaged outside this state;

(c) insurance on property or operations of railroads engaged in interstate commerce; or

(d) insurance on aircraft or cargo of such aircraft or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy or where the insurer enters a general appearance in any such action.

History: En. Sec. 181, Ch. 286, L. 1959; R.C.M. 1947, 40-3406; amd. Sec. 23, Ch. 537, L. 1987.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

33-1-615. Defense of action by unauthorized insurer. (1) Before an unauthorized insurer shall file or cause to be filed any pleading in any action or proceeding instituted against it under 33-1-612 and 33-1-613, such insurer shall:

(a) procure a certificate of authority to transact insurance in this state; or

(b) deposit with the clerk of the court in which such action or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action. The court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action or proceeding and that the insurer will pay any final judgment entered therein without requiring suit to be brought on such judgment in the state where such funds or securities are located.

(2) The court in any action or proceeding in which service is made in the manner provided in 33-1-613 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) above and to defend such action.

(3) Nothing in subsection (1) above is to be construed to prevent an unauthorized insurer from filing a motion to quash or to set aside the service of any process made in the manner provided in 33-1-613 hereof, on the ground either:

(a) that such unauthorized insurer has not done any of the acts enumerated in 33-1-612; or

(b) that the person on whom service was made pursuant to 33-1-613(2) was not doing any of the acts therein enumerated.

History: En. Sec. 182, Ch. 286, L. 1959; R.C.M. 1947, 40-3407.

Cross-References

Motion to quash or set aside service, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

33-1-616. Attorney's fee. In any action against an unauthorized insurer under this Unauthorized Insurers Process Act, if the insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the insurance contract and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. The fee shall not exceed one-third of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than $100. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

History: En. Sec. 183, Ch. 286, L. 1959; R.C.M. 1947, 40-3408.

Cross-References

Attorney fees, 25-10-301.

Summary judgment, Rule 56, M.R.Civ.P. (see Title 25, ch. 20).

Factual basis for punitive or exemplary damages, 27-1-220.

Part 7
Hearings and Appeals

Part Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

33-1-701. Hearings — discretion — written demand — limitations on actions. (1) The commissioner may hold hearings for any purpose within the scope of this code considered necessary.

(2) The commissioner shall hold a hearing if required by any provision or upon written demand by a person aggrieved by any act, threatened act, or failure to act or by any report, rule, or order by the commissioner, other than an order for holding a hearing, an order on a hearing, or an order pursuant to a hearing. The person's demand must specify the grounds relied upon as a basis for the relief sought at the hearing, and unless postponed by mutual consent, the hearing must be held within 30 days after receipt by the commissioner of the demand for a hearing.

(3) If within the 30-day period the commissioner does not either grant the hearing or issue an order refusing to set the hearing, then the hearing must be considered to have been refused.

(4) Unless otherwise provided by law, the department shall commence an action for a violation of the insurance code within 2 years of the date of the violation or within 2 years after the department discovers the violation or through the use of reasonable diligence should have discovered the violation, whichever occurs last. Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, an action may not be commenced by the department unless it is brought within 5 years of the date of the violation.

History: En. Sec. 39, Ch. 286, L. 1959; R.C.M. 1947, 40-2720; amd. Sec. 1, Ch. 331, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 331 inserted (4) establishing statute of limitations for actions brought by state auditor for a violation of the insurance code; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Contested administrative proceeding — notice requirements, 2-4-601.

33-1-702. Stay of action. (1) Such a demand for a hearing received by the commissioner prior to the effective date of any order issued by him or within 10 days after such order is delivered shall stay the effectiveness of such order pending the hearing and an order made thereon, except as to action taken or proposed under:

(a) an order on hearing;

(b) an order pursuant and supplemental to an order on hearing; or

(c) an order based upon impairment of assets or unsound financial condition of an insurer.

(2) If an automatic stay is not provided for and the commissioner after written request therefor fails to grant a stay, the person aggrieved may apply to the district court for Lewis and Clark County for a stay of the commissioner's proposed action.

History: En. Sec. 40, Ch. 286, L. 1959; R.C.M. 1947, 40-2721.

33-1-703. Notice of hearing. Not less than 10 days in advance, the commissioner shall give notice of the time and place of the hearing, stating the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons whose pecuniary interests are to be directly and immediately affected by such hearing.

History: En. Sec. 41, Ch. 286, L. 1959; R.C.M. 1947, 40-2722.

Cross-References

Contested administrative hearings — notice requirements, 2-4-601.

33-1-704. Hearing procedure. (1) All hearings shall be open to the public unless closed pursuant to the provisions of 2-3-203.

(2) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf.

(3) The commissioner shall permit to become a party to the hearing by intervention, if timely, any person who was not an original party thereto and whose pecuniary interests will be directly and immediately affected by the commissioner's order made upon the hearing.

(4) Except as provided in 33-31-404, rules of pleading need not be observed at any hearing, but the rules of evidence must be observed.

(5) Upon written request seasonably made by a party to the hearing and at that person's expense, the commissioner shall cause a full stenographic record of the proceedings to be made by a competent reporter. If transcribed, a copy of such stenographic record shall be furnished to the commissioner without cost to the commissioner or the state and shall be a part of the commissioner's record of the hearing. If so transcribed, a copy of such stenographic record shall be furnished to any other party to such hearing at the request and expense of such other party. If no stenographic record is made or transcribed, the commissioner shall prepare an adequate record of the evidence and of the proceedings.

History: En. Sec. 42, Ch. 286, L. 1959; R.C.M. 1947, 40-2723(1) thru (5); amd. Sec. 7, Ch. 198, L. 1979; amd. Sec. 32, Ch. 457, L. 1987; amd. Sec. 32, Ch. 798, L. 1991.

Cross-References

Hearing procedure — Montana Administrative Procedure Act, 2-4-612.

Record of hearing — contents, 2-4-614.

33-1-705. Rehearing. Upon written request of a party to a hearing filed with the commissioner within 30 days after any order made pursuant to a hearing has been mailed or delivered to the persons entitled to receive the same, the commissioner may, in his discretion, grant a rehearing or reargument of the matters involved in such hearing. Notice of such rehearing or reargument shall be given as provided in 33-1-703.

History: En. Sec. 42, Ch. 286, L. 1959; R.C.M. 1947, 40-2723(6).

33-1-706. Order on hearing. (1) In conducting any such hearing, the commissioner shall sit in a quasi-judicial capacity. Within 30 days after termination of the hearing or of any rehearing thereof or reargument thereon, he shall make his order on hearing covering matters involved in such hearing and in any rehearing or reargument thereof and shall give a copy of such order to the same persons given notice of the hearing.

(2) The order shall contain a concise statement of the facts as found by the commissioner, of his conclusions therefrom, and of the matters required by 33-1-314.

(3) The order may affirm, modify, or nullify action theretofore taken or may constitute the taking of new action within the scope of the notice of hearing.

History: En. Sec. 43, Ch. 286, L. 1959; R.C.M. 1947, 40-2724.

Cross-References

Quasi-judicial function defined, 2-15-102.

33-1-707 through 33-1-710 reserved.

33-1-711. Appeals from the commissioner. (1) An appeal from the commissioner may be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to the hearing or whose pecuniary interests are directly and immediately affected by any order or refusal and who is aggrieved by an order or refusal may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from the order on hearing or the refusal of a hearing. Any request for a stay of the commissioner's order must be made within 60 days, to run concurrently with the 30 days for appeal. The appeal must be taken to the district court of Lewis and Clark County by filing written notice of appeal in the court and by filing a copy of the notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an insurance producer or surplus lines insurance producer, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal, the court has full jurisdiction and shall determine whether the filing operates as a stay of the order or action appealed from.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced at the hearing. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall, within the 20-day period, make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which the appeal is taken.

(4) Upon receipt of the transcripts and evidence, the court shall hear the matter as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents filed by the commissioner, together with additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner, in whole or in part, or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs must be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any judgment may be made only by order of the supreme court upon the giving of security as that court considers proper.

(8) This section does not apply to appeals as to matters covered by chapter 16.

History: En. Sec. 44, Ch. 286, L. 1959; R.C.M. 1947, 40-2725; amd. Sec. 1, Ch. 119, L. 1987; amd. Sec. 24, Ch. 537, L. 1987; amd. Sec. 8, Ch. 713, L. 1989; amd. Sec. 1, Ch. 798, L. 1991.

Cross-References

Costs in civil actions, Title 25, ch. 10.

Appeal to Supreme Court, Rule 52(c), M.R.App.P. (see Title 25, ch. 21).

Part 8

Interference With Medical Communications

33-1-801. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Enrollee" means the individual to whom a health care service is provided or will be provided under a health plan.

(2) "Health care provider" or "provider" means a health care professional or facility.

(3) "Health carrier" means an entity that is subject to the insurance laws and rules of this state and that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. The term includes a disability insurer, health maintenance organization, or a health service corporation or other entity providing a health benefit plan.

(4) "Health plan" or "health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(5) "Managed care organization" means an entity that manages, owns, contracts with, or employs health care providers to provide health care services under a health plan. The term includes a health maintenance organization, as defined in 33-31-102, and an entity that does not itself provide health plans.

(6) "Medical communication" means:

(a) a communication made by a health care provider to an enrollee or to the guardian or other legal representative of an enrollee receiving health care services from the provider:

(i) concerning the mental or physical health care needs or treatment of the enrollee and the provisions, terms, or requirements of the health plan or another health plan relating to the needs or treatment of the enrollee; and

(ii) including a communication concerning:

(A) a test, consultation, or treatment option and a risk or benefit associated with the test, consultation, or option;

(B) variation among health care providers and health care facilities, as defined in 50-5-101, in experience, quality of health care services, or health outcomes;

(C) the basis or standard for the decision of the enrollee's health carrier or managed care organization to authorize or deny a health care service;

(D) the process used by the enrollee's health carrier or managed care organization to determine whether to authorize or deny a health care service; or

(E) a financial incentive or disincentive provided by the enrollee's health carrier or managed care organization to a health care provider to authorize or deny a health care service;

(b) a communication made by a health care provider to another health care provider, an employee or contractor of the enrollee's managed care organization, or an employee of the health carrier advocating a particular method of treatment on behalf of an enrollee.

History: **En. Sec. 2, Ch. 527, L. 1997.**

33-1-802. Gag clauses and other action affecting medical communications prohibited — exceptions. (1) A health carrier or managed care organization may not by an oral or written contract, by an oral or written direction or requirement, or by a financial inducement or penalty prohibit a provider from making or interfere with a provider making a medical communication to an enrollee. A contract, direction, requirement, or financial inducement or penalty violating this subsection is void.

(2) Subsection (1) does not apply to:

(a) an oral or written contract, direction, requirement, or financial inducement or penalty prohibiting a provider from disclosing a trade secret, as defined in 30-14-402, to the same extent as other employees or contractors of the health carrier or managed care organization are prohibited from disclosing the trade secret;

(b) an oral or written contract, direction, requirement, or financial inducement or penalty prohibiting a health care provider from referring an enrollee to another health plan or managed care organization in which the provider making the referral has a direct financial interest; and

(c) the terms of an oral or written contract mutually agreed upon by a health carrier or managed care organization and a provider requiring the provider to participate in and cooperate with all programs, policies, and procedures implemented by the health carrier or managed care organization to ensure, review, or improve the quality of health care.

History: En. Sec. 3, Ch. 527, L. 1997.

33-1-803. Sanction because of medical communication prohibited. A health carrier or managed care organization may not take any of the following actions with regard to a health care provider because the provider made a medical communication to an enrollee or to the guardian or legal representative of the enrollee:

(1) terminate an agreement between the health carrier or managed care organization and the health care provider to provide health care services;

(2) reduce compensation to the provider;

(3) demote the provider in regard to relative seniority within the managed care organization;

(4) transfer the provider to other duties within the managed care organization;

(5) deny the provider admitting or other privileges; or

(6) take other action against the provider in retaliation for a medical communication made by the provider to an enrollee.

History: En. Sec. 4, Ch. 527, L. 1997.

33-1-804. Civil penalty — civil action for collection of penalty. (1) A health carrier or a managed care organization violating 33-1-802 or 33-1-803 is subject to a civil penalty, as provided in 33-1-317, for each violation. Each day of violation constitutes a separate violation for the purposes of this section.

(2) In addition to other enforcement methods provided by law, the commissioner may bring a civil action in the district court of the first judicial district to collect the civil penalty provided for in subsection (1) from a person violating a provision of this part. An amount collected by the commissioner pursuant to this section must be deposited in the general fund.

History: En. Sec. 5, Ch. 527, L. 1997.

Parts 9 and 10 reserved

Part 11

Jurisdiction of Providers of Health Care Benefits

Part Cross-References

Health service corporations, Title 33, ch. 30.

33-1-1101. Short title. This part may be cited as the "Jurisdiction to Determine Jurisdiction of Providers of Health Care Benefits Act".

History: En. Sec. 1, Ch. 497, L. 1983.

33-1-1102. Authority and jurisdiction of insurance department. Notwithstanding any other provision of law and except as provided in this part, any person or other entity that provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech-language pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, is presumed to be subject to the jurisdiction of the department unless the person or other entity shows that while providing such services it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government.

History: En. Sec. 2, Ch. 497, L. 1983; amd. Sec. 6, Ch. 413, L. 1989.

33-1-1103 through 33-1-1110 reserved.

33-1-1111. How to show jurisdiction. A person or entity may show that it is subject to the jurisdiction of another agency of this or another state or any subdivision of this state or another state or the federal government by providing the commissioner with the appropriate certificate, license, or other document issued by the other governmental agency that permits or qualifies it to provide those services. If it is not the practice of the governmental agency to issue a certificate, license, or other document establishing that the agency permits the person or entity to provide those services, the person or entity may show that it is subject to the jurisdiction of the agency by other means appropriate under the circumstances.

History: En. Sec. 3, Ch. 497, L. 1983; amd. Sec. 16, Ch. 420, L. 1995.

Cross-References

Regulation of medicine, Title 37, ch. 3.

Regulation of dentistry and dental hygiene, Title 37, ch. 4.

Regulation of optometry, Title 37, ch. 10.

Regulation of physical therapy, Title 37, ch. 11.

Regulation of practice of chiropractic, Title 37, ch. 12.

Regulation of speech-language pathologists and audiologists, Title 37, ch. 15.

Regulation of psychologists, Title 37, ch. 17.

Regulation of denturitry, Title 37, ch. 29.

33-1-1112. Subject to state laws. A person or entity unable to show that it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government is subject to all appropriate provisions of this code regarding the conduct of its business.

History: En. Sec. 5, Ch. 497, L. 1983.

33-1-1113. Examination. A person or entity which is unable to show under 33-1-1111 that it is subject to the jurisdiction of another agency of this or another state or a subdivision thereof or the federal government must submit to an examination by the commissioner to determine the organization and solvency of the person or entity and to determine whether or not such person or entity complies with the applicable provisions of this code.

History: En. Sec. 4, Ch. 497, L. 1983.

33-1-1114. Disclosure. (1) A production agency or administrator that advertises, sells, transacts, or administers the coverage in this state described in 33-1-1102 and that is required to submit to an examination by the insurance commissioner under 33-1-1113 shall, if such coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer or nonprofit health service corporation, advise every purchaser, prospective purchaser, and covered person of such lack of insurance or other coverage.

(2) An administrator that advertises or administers the coverage in this state described in 33-1-1102 and is required to submit to an examination by the commissioner under 33-1-1113 shall advise any production agency of the elements of the coverage, including the amount of "stop-loss" insurance in effect.

History: En. Sec. 6, Ch. 497, L. 1983.

Part 12

Insurance Fraud Protection

33-1-1201. Short title — purpose. (1) This part may be cited as the "Insurance Fraud Protection Act".

(2) The purpose of this part is to facilitate the detection of insurance fraud and reduce the occurrence of insurance fraud through the development of fraud prevention programs, improved investigative and prosecutorial services, and increased consumer awareness.

History: En. Sec. 1, Ch. 237, L. 1995.

33-1-1202. Insurance fraud. A person commits the act of insurance fraud when the person:

(1) for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, purported insurer, broker, or agent any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;

(2) assists, abets, solicits, or conspires with another to prepare or make any written or oral statement containing false, incomplete, or misleading information concerning any fact that is intended to be presented to any insurer or purported insurer or in connection with, material to, or in support of any claim for payment or other benefit pursuant to an insurance policy or contract;

(3) presents or causes to be presented to or by an insurer, purported insurer, broker, or agent a materially false or altered application of insurance;

(4) accepts premium money knowing that coverage will not be provided;

(5) as a health care provider, submits a false or altered bill or report of physical condition to an insurer; or

(6) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent of deceiving an insurer.

History: En. Sec. 2, Ch. 237, L. 1995.

33-1-1203. Powers and duties of commissioner — confidentiality of documents. (1) The commissioner may:

(a) initiate independent inquiries and conduct independent investigations when the commissioner has reason to believe that insurance fraud may be, has been, or is currently being committed;

(b) respond to notice or complaints generated by federal, state, county, and local law enforcement officers, other entities with law enforcement responsibilities, or governmental agencies or units;

(c) review and respond to notices or reports of insurance fraud submitted by any person, select the incidents of suspected fraud that in the commissioner's judgment require further and more detailed investigation, and conduct the investigations;

(d) conduct independent examinations of insurance fraud to determine the extent of insurance fraud, deceit, or intentional misrepresentation;

(e) after investigation, report any meritorious alleged violation of the law to the appropriate prosecuting authority or licensing agencies; and

(f) assemble evidence, prepare charges, and prosecute, if requested, or otherwise assist any prosecuting authority that has jurisdiction, including the attorney general.

(2) Papers, records, documents, reports, materials, or other evidence relative to the subject of an insurance fraud investigation must remain confidential and must be treated as confidential criminal justice information as defined in 44-5-103.

Evidence procured pursuant to this section may not be disseminated, except as provided in 44-5-303.

(3) The commissioner shall notify the person who or the entity that has given notice of an alleged insurance fraud pursuant to 33-1-1205(2) of receipt of the notice by the commissioner and of the disposition of the notice and any resulting investigation.

History: **En. Sec. 3, Ch. 237, L. 1995.**

33-1-1204. Cooperation with law enforcement, licensing authorities, and other fraud agencies. (1) The commissioner shall cooperate with law enforcement authorities and all other authorized agencies and related insurance and professional licensing boards of this and other states. As used in this section, the term "authorized agencies" means:

(a) the attorney general of the state of Montana;

(b) the prosecuting attorney responsible for prosecution;

(c) the department of insurance of other jurisdictions;

(d) the United States attorney's office when that office is charged with investigation of the fraud; or

(e) the federal bureau of investigation or any other federal agency charged with investigation of the fraud.

(2) The commissioner shall cooperate to the extent allowed by law with insurance fraud investigators, related organizations of this and other states, and insurance commissioners of other states.

(3) If the commissioner determines that sufficient evidence of the commission of an act of insurance fraud exists, the commissioner shall inform the appropriate prosecuting authority and professional licensing boards.

History: **En. Sec. 4, Ch. 237, L. 1995.**

33-1-1205. Duties of authorized insurers, adjusters, administrators, consultants, and producers — notice exception. (1) Each insurer, independent adjuster, independent administrator, independent consultant, and independent producer shall cooperate fully with the commissioner with respect to the provisions of this part.

(2) Except as provided in subsection (4), an insurer, an officer, or an employee of the insurer, an independent adjuster, an independent administrator, an independent consultant, or an independent producer who has reason to believe that an insurance fraud has been or is being committed shall provide notice of the alleged insurance fraud to the commissioner within 60 days. A producer of an insurer who has reason to believe that an insurance fraud has been or is being committed shall report the alleged fraud to the insurer within 60 days of discovery of the alleged insurance fraud. The insurer shall review the report. If the insurer determines that there is reasonable likelihood that fraud has occurred, the insurer shall forward the report to the commissioner within 30 days of receipt of the report.

(3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud has been committed in connection with an insurance claim, application, or policy tolls any applicable time period, for the commissioner, in any applicable insurance statute, related insurance regulation, or applicable sections of the criminal code and tolls any time period arising under 33-18-232 or 33-18-242 regarding unfair claims settlement practices.

(4) Notice of an alleged insurance fraud involving an insurance claim or application submitted to the state compensation insurance fund or a policy issued by the state compensation insurance fund must be made within 60 days to the fraud detection and prevention unit established pursuant to 39-71-211.

History: En. Sec. 5, Ch. 237, L. 1995; amd. Sec. 4, Ch. 276, L. 1997; amd. Sec. 2, Ch. 531, L. 1997.

33-1-1206. Persons not connected with insurance industry — reward fund. (1) Any person who has knowledge of or who believes that an act of insurance fraud is being or has been committed may provide the commissioner with a report or information pertinent to the knowledge and belief and may provide additional information that the commissioner requests.

(2) The commissioner, in cooperation with authorized insurers, producers, and other interested parties, may establish a fund to reward persons who are not connected with the insurance industry and who provide information or furnish evidence leading to the arrest and conviction of persons responsible for insurance fraud. Participation in the fund must be purely voluntary. The books and records of the fund must be open and subject to review by the legislative auditor.

History: En. Sec. 6, Ch. 237, L. 1995.

33-1-1207 through 33-1-1209 reserved.

33-1-1210. Immunity from liability. (1) In the absence of malice, an insurer, an officer, employee, or producer of the insurer, an independent adjuster, an administrator, a consultant, or any private person is not subject to civil liability for filing reports, providing information, or otherwise cooperating with an investigation or examination of insurance fraud conducted by the commissioner.

(2) A person listed in subsection (1) receives immunity if the person:

(a) cooperates with, furnishes evidence to, or provides information regarding any suspected insurance fraud to the commissioner, the national association of insurance commissioners, any nonprofit organization established to detect and prevent insurance fraud, or other insurer or producer; or

(b) complies with an order issued by a court of competent jurisdiction acting in response to a request by the commissioner to furnish evidence or provide testimony.

History: En. Sec. 7, Ch. 237, L. 1995.

33-1-1211. Penalties. (1) If, after a hearing conducted under 33-1-701, the commissioner determines that a person has committed insurance fraud, the commissioner may:

(a) impose any penalty provided for in 33-1-317; or

(b) require the person to pay the costs of the proceeding.

(2) Any person who purposely or knowingly commits insurance fraud commits the offense of theft under 45-6-301.

(3) In addition to any other penalties, the commissioner shall require a person who commits insurance fraud to make restitution to the insurer or to any other person for all financial loss sustained as a result of the insurance fraud.

History: En. Sec. 8, Ch. 237, L. 1995.

Part 13

Insurer Insurance Fraud Protection

33-1-1301. Insurance and securities fraud education and prevention program. The commissioner may:

(1) establish an insurance and securities fraud education and prevention program; and

(2) conduct investigations of insurance and securities fraud.

History: En. Sec. 1, Ch. 390, L. 1997.

33-1-1302. Insurance fraud — insurer. (1) A person commits the act of insurance fraud when in the course of offering or selling insurance, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment.

(2) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

(3) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income or refund received by the victim from the insurance.

(4) The commissioner may require a person who commits insurance fraud to make full restitution to any insurer, purported insurer, or insurance producer who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

(5) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

(6) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

(7) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds commits the offense of theft and is punishable as provided in 45-6-301, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.

History: En. Sec. 2, Ch. 390, L. 1997.

33-1-1303. Reporting requirements. (1) An insurer, insurance producer, or other person who has reason to believe insurance fraud has occurred shall report the suspected fraud to the commissioner or to the insurance producer's or other person's insurer within 60 days of discovery of the occurrence. An insurer shall review a report given to the insurer, and if the insurer determines that there is a reasonable likelihood that fraud has occurred the insurer shall forward the report to the commissioner within 30 days of receipt.

(2) In the absence of malice, an insurer, insurance producer, or other person may not be subjected to civil liability for reporting or providing information or otherwise cooperating with an investigation of insurance fraud.

History: En. Sec. 3, Ch. 390, L. 1997.

CHAPTER 2

REGULATION OF INSURANCE COMPANIES

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Part 1
Authorization of Insurers

33-2-101. Certificate of authority required. (1) No person shall act as an insurer and no insurer shall transact insurance in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner, except as to such transactions as are expressly otherwise provided for in this code.

(2) No insurer shall have or maintain in Montana any office, representative, or other facilities for the solicitation or servicing of any kind of insurance in any other state unless it is then authorized to transact the same kind of insurance in this state.

History: En. Sec. 46, Ch. 286, L. 1959; R.C.M. 1947, 40-2801.

Cross-References

Examination prior to initial issuance of certificate, 33-1-401.

Lack of or revocation of certificate — grounds for conservation or liquidation of assets — alien or foreign insurer, 33-2-1379.

Membership in Montana Insurance Guaranty Association — condition of authority to operate in state, 33-10-103, 33-10-203.

Motor club service companies — licensing, 61-12-302.

33-2-102. Exceptions to certificate of authority requirement. A certificate of authority shall not be required of an insurer, not otherwise authorized in this state, as to the following transactions:

(1) transactions relative to its policies lawfully written in Montana or liquidation of assets and liabilities of the insurer (other than collection of new premiums), all as resulting from its former authorized operations in Montana;

(2) transactions relative thereto subsequent to issuance of a policy covering only subjects of insurance not resident, located, or expressly to be performed in Montana at time of issuance, and which coverage was lawfully solicited, written, and delivered outside Montana;

(3) transactions pursuant to surplus lines coverages lawfully written pursuant to part 3 of this chapter;

(4) reinsurance, except as to domestic reinsurers.

History: En. Sec. 47, Ch. 286, L. 1959; R.C.M. 1947, 40-2802.

33-2-103. Admission for investment only. A foreign insurer may transact business in this state without certificate of authority for the purpose and to the extent only of investing its funds in Montana real estate or in securities secured thereby by complying with the applicable laws of this state other than this code. Such an insurer shall not be subject to any other provision of this code.

History: En. Sec. 48, Ch. 286, L. 1959; R.C.M. 1947, 40-2803.

Cross-References

Securities regulation, Title 30, ch. 10.

33-2-104. Representing or aiding unauthorized insurer prohibited. (1) No person shall in this state directly or indirectly act as insurance producer for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact insurance in this state in the solicitation, negotiation, or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state.

(2) This section shall not apply to:

(a) acceptance of service of process by the commissioner under 33-1-613;

(b) surplus lines insurance and other transactions as to which certificate of authority is not required of an insurer as stated in 33-2-102.

(3) Any person violating this section shall upon conviction thereof be guilty of a felony.

History: En. Sec. 176, Ch. 286, L. 1959; R.C.M. 1947, 40-3401; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Tax and report — due of insured of unauthorized insurer, 33-2-706.

Felony, 46-18-213.

33-2-105. Suits by unauthorized insurers prohibited. Except as to transactions permitted under 33-2-102, no unauthorized insurer shall institute or file or cause to be instituted or filed any suit, action, or proceeding in this state to enforce any right, claim, or demand arising out of any insurance transaction in this state until such insurer has obtained a certificate of authority to transact such insurance in this state.

History: En. Sec. 177, Ch. 286, L. 1959; R.C.M. 1947, 40-3402; amd. Sec. 8, Ch. 198, L. 1979.

Cross-References

Unauthorized Insurers Process Act, 33-1-611 through 33-1-616.

Tax and report — due of insured of unauthorized insurer, 33-2-706.

33-2-106. General eligibility of insurers. (1) To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its charter powers and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer, all of the same general type as may hereafter be formed as a domestic insurer under this code.

(2) No foreign insurer shall be authorized to transact insurance in Montana which does not maintain reserves as required by part 5 of this chapter applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States, or which transacts business anywhere in the United States on the assessment plan, stipulated premium plan, or any similar plan.

(3) No foreign insurer which is directly or indirectly owned or controlled in whole or in substantial part by any government or governmental agency shall be authorized to transact insurance in Montana unless it was so owned and first so authorized prior to January 1, 1957. Membership or subscribership in a mutual or reciprocal insurer by virtue of being a policyholder thereof, ownership of stock or other security which does not have voting rights with respect to the management of the insurer, or supervision of an insurer by public authority shall not be deemed to be an ownership or control of the insurer for the purposes of this provision.

History: En. Sec. 49, Ch. 286, L. 1959; R.C.M. 1947, 40-2804.

Cross-References

Examination prior to issuance of initial certificate, 33-1-401.

33-2-107. Name — dissimilar. (1) No insurer shall be authorized to transact insurance in this state which has or uses a name so similar to that of another insurer already so authorized as likely to mislead the public.

(2) No life insurer shall be authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state within the preceding 10 years if life insurance policies originally issued by such other insurer are still outstanding in this state.

(3) No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.

(4) In case of conflict of names between two insurers or a conflict otherwise prohibited under the foregoing subsections of this section, the commissioner may permit or require the more recently authorized insurer to use in Montana such supplementation or modification of its name or such business name as may reasonably be necessary to avoid such conflict.

History: En. Sec. 50, Ch. 286, L. 1959; R.C.M. 1947, 40-2805.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

33-2-108. Combinations of insuring powers. (1) Except as provided in subsections (2), (3), and (4) and 33-25-213, an insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in 33-1-205 through 33-1-212.

(2) A life insurer may also grant annuities but shall not be authorized to transact any other kind of insurance other than disability, except that if the insurer is otherwise qualified therefor, the commissioner shall continue to so authorize any life insurer which, immediately prior to January 1, 1961, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(3) A reciprocal insurer shall not transact life insurance.

(4) A title insurer shall be a stock insurer.

History: En. Sec. 51, Ch. 286, L. 1959; R.C.M. 1947, 40-2806; amd. Sec. 16, Ch. 519, L. 1985.

Cross-References

Reciprocal insurers, Title 33, ch. 5.

33-2-109. Capital or surplus funds required. (1) To qualify for authority to transact any one kind of insurance, as defined in 33-1-205 through 33-1-212, or combinations of kinds of insurance as shown below, an insurer shall possess and maintain unimpaired paid-in capital stock, if a stock insurer, or surplus, if a mutual or foreign reciprocal insurer, in an amount not less than is applicable under the schedules below and shall possess when first authorized to transact insurance any additional funds as surplus as required under 33-2-110:

(a) Kind or kinds of insurance	Minimum capital or surplus required
Life	$200,000
Disability	200,000
Life and disability	300,000
Credit life and disability	50,000
Property	400,000
Marine	400,000
Casualty	
All lines, except workers' compensation	400,000
All lines, including workers' compensation	600,000
Surety	500,000
Title	200,000
Multiple lines, two or more of property, marine, casualty, or surety	800,000

(b) For insurers licensed on or after October 1, 1999:

Kind or kinds of insurance	Minimum capital or surplus required
Life	$600,000
Disability	500,000
Life and disability	750,000
Credit life and disability	150,000
Property	500,000
Marine	500,000
Casualty	
All lines, except workers' compensation	500,000
All lines, including workers' compensation	750,000
Surety	500,000
Title	500,000
Multiple lines, two or more of property, marine, casualty, or surety	1,000,000

(2) Surplus requirements for qualification to transact one or more kinds of insurance for domestic mutual insurers are governed by Title 33, chapter 3, and surplus requirements for domestic reciprocal insurers are governed by Title 33, chapter 5.

(3) Capital and surplus requirements must be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any areas in which it operates, whether or not only a portion of the kinds are to be transacted in this state.

(4) A life insurer may also grant annuities without additional capital or additional surplus.

(5) For a credit life and disability insurer that is not a resident domestic insurer as defined in 33-1-201 and 33-1-202, the capital or surplus required by this section is an amount equal to four times the minimum capital or surplus required for credit life and disability pursuant to subsection (1).

History: En. Sec. 52, Ch. 286, L. 1959; amd. Sec. 1, Ch. 319, L. 1977; R.C.M. 1947, 40-2807(part); amd. Sec. 2, Ch. 303, L. 1981; amd. Sec. 3, Ch. 202, L. 1983; amd. Sec. 12, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 inserted (1)(b) providing a schedule for insurers licensed on or after October 1, 1999; and made minor changes in style. Amendment effective October 1, 1999.

33-2-110. Special surplus required. In addition to the minimum paid-in capital stock (stock insurers) or minimum surplus (mutual and reciprocal insurers) required by 33-2-109, special surplus shall be possessed by insurers as follows:

(1) All stock insurers and mutual and foreign reciprocal insurers which have actively transacted insurance in their state of domicile as an authorized insurer for less than 5 years or, if an alien insurer, have transacted insurance as an authorized insurer in at least one state of the United States for less than 5 years when first authorized to transact insurance in this state shall have a surplus or additional surplus equal to not less than 100% of the paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal) otherwise required under 33-2-109 for the kinds of insurance to be transacted.

(2) Insurers that have actively transacted insurance as authorized insurers in one or more states of the United States for more than 5 years shall possess, when first authorized in this state, surplus or additional surplus equal to not less than 50% of the paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) otherwise required under 33-2-109.

(3) Insurers authorized to transact multiple lines of insurance in this state shall at all times have and maintain surplus of not less than $100,000, in addition to the capital (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) required by 33-2-109. The amount of such surplus shall be included within the surplus required of newly authorized insurers pursuant to subsections (1) and (2) of this section.

History: En. Sec. 53, Ch. 286, L. 1959; R.C.M. 1947, 40-2808; amd. Sec. 3, Ch. 303, L. 1981.

33-2-111. Deposit requirement. (1) An insurer shall not be authorized to transact insurance in this state unless it makes and thereafter maintains in trust in this state through the commissioner for the protection of all its policyholders or of all its policyholders and creditors a deposit of cash or securities eligible for deposit under 33-2-603 in an amount not less than the minimum paid-in capital stock (if a stock insurer) or minimum surplus (if a mutual or reciprocal insurer), other than special surplus, required to be maintained for authority to transact the kinds of insurance to be transacted, except as to:

(a) title insurers, the deposit shall be in the amount of $100,000;

(b) foreign insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept the certificate in proper form of the public official having supervision over insurers in any other state to the effect that a like deposit or part thereof by such insurer is being maintained in public custody therein in trust for the purpose, among other reasonable purposes of protection of policyholders and/or creditors, of the protection of all its policyholders or policyholders and creditors in Montana;

(c) alien insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept evidence satisfactory to him that the insurer maintains within the United States by way of trust deposits with public depositaries or in trust institutions approved by the commissioner assets available for discharge of its United States insurance obligations which assets shall be in amount not less than the outstanding liabilities of the insurer arising out of its insurance transactions in the United States, together with the larger of the following sums:

(i) the largest deposit required by this code to be made by foreign insurers transacting like kinds of insurance; or

(ii) $300,000.

(2) Deposits of foreign or alien insurers in another state shall be in cash and/or securities of substantially the same quality as those eligible for deposit in this state under 33-2-603.

(3) Deposits of reserves by domestic life insurers shall be made as provided in 33-2-531.

(4) Deposits made in this state shall further be subject to the provisions of part 6 of this chapter.

History: En. Sec. 54, Ch. 286, L. 1959; R.C.M. 1947, 40-2809; amd. Sec. 1, Ch. 238, L. 1979.

33-2-112. Management qualifications and affiliations. The commissioner shall not grant or continue authority to transact insurance in this state as to any insurer the principal management personnel of which is found by him to be untrustworthy or not of good character or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public or to its stockholders or which he has good reason to believe is affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person or persons whose business operations, to the detriment of insurers, stockholders, or creditors, are or have been marked by manipulation of assets, accounts, or reinsurance or by bad faith.

History: En. Sec. 55, Ch. 286, L. 1959; R.C.M. 1947, 40-2810.

33-2-113 and 33-2-114 reserved.

33-2-115. Application for certificate of authority. To apply for an original certificate of authority, an insurer shall file with the commissioner its application therefor accompanied by the applicable fees as specified in 33-2-708, showing its name, location of its home office or principal office in the United States, if an alien insurer, kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional information as the commissioner may reasonably require, together with the following documents, as applicable:

(1) if a foreign insurer, a copy of its corporate charter or articles of incorporation, with all amendments thereto, certified by the public officer with whom the originals are on file in the state or country of domicile;

(2) if a mutual insurer, a copy of its bylaws as amended, certified by its secretary or other officer having custody thereof;

(3) if a reciprocal insurer, copies of the power of attorney of its attorney-in-fact and of its subscribers' agreement, if any, certified by its attorney-in-fact;

(4) a copy of its financial statement as of December 31 next preceding, sworn to by at least two executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States;

(5) a copy of report of last examination, if any, made of the insurer, certified by the insurance supervisory official of its state of domicile or of entry into the United States;

(6) appointment of the commissioner pursuant to 33-1-601, as its attorney to receive service of legal process;

(7) if a foreign or alien insurer, a certificate of the public official having supervision of insurance in its state or country of domicile or state of entry into the United States, showing that it is authorized to transact the kinds of insurance proposed to be transacted in this state;

(8) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records;

(9) if a foreign insurer, certificate as to deposit if to be tendered pursuant to 33-2-111;

(10) specimen copies of policies proposed to be offered in this state, together with premiums or premium rates applicable, or a declaration that such rates as applicable will be those promulgated by designated rating organizations authorized to file such rates in this state on behalf of the insurer.

History: En. Sec. 56, Ch. 286, L. 1959; R.C.M. 1947, 40-2811.

33-2-116. Issuance or refusal of certificate of authority — state ownership of certificate. (1) If upon completion of its application the commissioner finds that the insurer has met the requirements for and is entitled thereto under this code, he shall issue to the insurer a proper certificate of authority. If he does not so find, the commissioner shall issue his order refusing such certificate. The commissioner shall act upon an application for a certificate of authority within 180 days after its completion.

(2) The certificate, if issued, shall specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration, suspension, or termination thereof, the insurer shall promptly deliver the certificate of authority to the commissioner.

History: En. Sec. 57, Ch. 286, L. 1959; R.C.M. 1947, 40-2812; amd. Sec. 4, Ch. 303, L. 1981.

33-2-117. Renewal, expiration, reinstatement, and amendment of certificate of authority. (1) A certificate of authority issued or renewed under this code must continue in force as long as the insurer is entitled under this code and until suspended, revoked, or otherwise terminated. A certificate is subject to renewal by the insurer each year by payment on or prior to March 1 of the fee provided for in 33-2-708.

(2) If not continued by the insurer, the certificate of authority expires at midnight on May 31 following failure of the insurer to continue it in force. The commissioner shall promptly notify the insurer of its failure to pay the fee that can result in the expiration of its certificate of authority.

(3) The commissioner may reinstate a certificate of authority that the insurer has inadvertently permitted to expire after the insurer cures any failures resulting in expiration and upon payment of a fee of $100 for reinstatement in addition to the fee provided for in 33-2-708. Otherwise, the insurer may be granted another certificate of authority only after filing an application and meeting all other requirements for an original certificate of authority in this state.

(4) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter of insuring powers.

History: En. Sec. 58, Ch. 286, L. 1959; R.C.M. 1947, 40-2813; amd. Sec. 1, Ch. 139, L. 1987; amd. Sec. 7, Ch. 379, L. 1995; amd. Sec. 1, Ch. 316, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 316 in (1) in first sentence after "subject to" substituted "renewal" for "continuance"; in (3) near middle of first sentence after "payment of" inserted "a fee of $100"; and made minor changes in style. Amendment effective January 1, 2000.

Cross-References

Failure to report — revoke or refuse to reinstate certificate, 33-2-701.

33-2-118. Mandatory revocation or suspension of certificate of authority. (1) The commissioner shall suspend or revoke an insurer's certificate of authority if:

(a) such action is required by any provision of this code;

(b) the insurer no longer meets the requirements for the authority originally granted, on account of deficiency of assets or otherwise; or

(c) the insurer's authority to transact insurance is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer.

(2) Except in cases of insolvency or impairment of required capital or surplus or suspension or revocation by another state as referred to in subsection (1)(c) above, the commissioner shall give the insurer at least 15 days' notice in advance of any such suspension or revocation under this section.

History: En. Sec. 59, Ch. 286, L. 1959; R.C.M. 1947, 40-2814.

Cross-References

Revocation — alien or foreign insurer — grounds for conservation or liquidation of assets, 33-2-1379.

33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may suspend or revoke an insurer's certificate of authority if, after a hearing, the commissioner finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders

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(2) The commissioner shall, after a hearing, suspend or revoke an insurer's certificate of authority if the commissioner finds that the insurer:

(a) is in unsound condition or in a condition or using methods or practices in the conduct of its business that render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay a proper claim arising under its policies, whether the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to the third person, or without just cause compels the insured or claimant to accept less than the amount due the claimant or to employ attorneys or to bring suit against the insurer or insured to secure full payment or settlement of the claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer that transacts direct insurance in Montana without having a certificate of authority, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, without advance notice or a hearing, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state.

History: **En. Sec. 60, Ch. 286, L. 1959; R.C.M. 1947, 40-2815; amd. Sec. 5, Ch. 303, L. 1981; amd. Sec. 2, Ch. 518, L. 1983; amd. Sec. 25, Ch. 537, L. 1987; amd. Sec. 46, Ch. 613, L. 1989; amd. Sec. 1, Ch. 620, L. 1989; amd. Sec. 2, Ch. 310, L. 1997.**

Cross-References

Hearings by Commissioner, Title 33, ch. 1, part 7.

Grounds for rehabilitation of insurer, 33-2-1331.

Revocation — alien or foreign insurer — grounds for conservation or liquidation of assets, 33-2-1379.

33-2-120. Notice of suspension or revocation — effect upon producer's authority. (1) Upon suspending or revoking an insurer's certificate of authority, the commissioner shall forthwith give notice thereof to the insurer and to its insurance producers in this state of record in the commissioner's office.

(2) Such suspension or revocation shall likewise automatically suspend or revoke, as the case may be, the authority of all such insurance producers to act as insurance producers of the insurer in this state, and the commissioner shall so state in the notice to insurance producers provided for in subsection (1).

(3) In his discretion the commissioner may also publish notice of such revocation in one or more newspapers of general circulation published in this state.

History: **En. Sec. 61, Ch. 286, L. 1959; R.C.M. 1947, 40-2816; amd. Sec. 1, Ch. 713, L. 1989.**

33-2-121. Duration of suspension — insurer's obligations — reinstatement. (1) Suspension of an insurer's certificate of authority shall be for such period as is fixed by the commissioner in the order of suspension and shall continue until rescinded or otherwise removed by the commissioner. During the suspension the commissioner may shorten the period thereof by his further order.

(2) During the period of the suspension the insurer shall file its annual statement and pay fees, licenses, and taxes as required under this code as if the certificate had continued in full force.

(3) If within such period of suspension the certificate of authority has not been terminated, the insurer's certificate of authority may be reinstated if the commissioner finds that the causes of the suspension have been removed or that the insurer is otherwise in compliance with the requirements of this code.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its insurance producers in this state to represent the insurer shall likewise reinstate.

(5) The commissioner shall forthwith notify both the insurer and its insurance producers in this state, as shown by his records, of such reinstatement.

History: **En. Sec. 62, Ch. 286, L. 1959; R.C.M. 1947, 40-2817; amd. Sec. 1, Ch. 534, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.**

33-2-122. Rights and duties of foreign insurer. Except as otherwise provided in this chapter, a foreign insurer which has a certificate of authority under this chapter shall, until its certificate is revoked or withdrawn, enjoy the same but no greater rights and privileges as a domestic insurer and shall be subject to the same duties, restrictions, penalties, and liabilities imposed upon a domestic insurer of like character.

History: **En. Sec. 1, Ch. 345, L. 1987.**

33-2-123 through 33-2-125 reserved.

33-2-126. Admission as domestic insurer — conversion to foreign insurer. (1) An insurer organized under the laws of any other state and admitted to do business in this state for the purposes of writing insurance may become a domestic insurer by complying with all of the laws relative to the organization and licensing of a domestic insurer of the same type, and designating its principal place of business in this state. An insurer complying with this subsection is entitled to a certificate of redomestication and a certificate of authority to transact business in this state, is subject to the authority and jurisdiction of this state, and has the same rights and obligations as other domestic insurers.

(2) A domestic insurer may, upon approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact insurance. If the insurer is otherwise qualified, the commissioner shall approve a proposed transfer unless the commissioner determines a transfer is not in the interest of the policyholders of this state. Upon a transfer, the insurer ceases to be a domestic insurer.

History: **En. Sec. 1, Ch. 132, L. 1991; amd. Sec. 2, Ch. 316, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 316 in (1) at end of first sentence deleted "and paying the filing fees specified in 33-2-708"; and made minor changes in style. Amendment effective January 1, 2000.

33-2-127. Effects of transfer of domicile. The certificate of authority, producers' appointments and licenses, policy forms, rates, and other items that the commissioner allows, in his discretion, that are in existence at the time an insurer admitted to transact insurance in this state transfers its corporate domicile to this or any other state continue in full force and effect upon transfer if the insurer remains qualified to transact insurance in this state. All rates and outstanding policies of a transferring insurer remain in full force and effect, and policies need not be endorsed as to the new name of the company or its domicile unless required by the commissioner. A transferring insurer either shall file new policy forms for use in this state with the commissioner on or before the effective date of the transfer or may use existing policy forms with the appropriate endorsements, as allowed by the commissioner. A transferring insurer shall notify the commissioner of the proposed transfer and shall promptly file any resulting amendments to corporate documents required to be filed with the commissioner.

History: **En. Sec. 2, Ch. 132, L. 1991.**

33-2-128. Authority to promulgate rules and regulations. The commissioner may promulgate rules and regulations to carry out the purposes of 33-2-126 and 33-2-127.

History: **En. Sec. 3, Ch. 132, L. 1991.**

Cross-References

Adoption & publication of rules, Title 2, ch. 4, part 3.

Part 2

State of Entry — Trusteed Assets of Alien Insurers

Part Cross-References

Annual report — alien insurers — additional requirements, 33-2-701.

33-2-201. Scope of part. This part applies to all alien insurers using Montana as a state of entry to transact insurance in the United States.

History: En. Sec. 599, Ch. 286, L. 1959; R.C.M. 1947, 40-5201.

33-2-202. Required deposit of assets. (1) An alien insurer may use Montana as a state of entry to transact insurance in the United States by making and maintaining in this state a deposit of assets in trust with a solvent bank or trust company approved by the commissioner.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, must be in amount not less than the deposits required of an alien insurer under 33-2-111(1) and must consist of cash and securities of the same character and diversification as those eligible for the investment of the funds of domestic insurers under chapter 12.

(3) A deposit under this section may be referred to as "trusteed assets".

History: En. Sec. 600, Ch. 286, L. 1959; R.C.M. 1947, 40-5202; amd. Sec. 37, Ch. 304, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 304 at end of (2) substituted reference to chapter 12 for reference to chapter 2, part 8; and made minor changes in style. Amendment effective July 1, 1999.

33-2-203. Existing trusts. All trusts of trusteed assets created before January 1, 1961, and existing on that date shall be continued under the instruments creating them unless inconsistent with the provisions of this part.

History: En. Sec. 601, Ch. 286, L. 1959; R.C.M. 1947, 40-5203.

33-2-204. Purpose and duration. The deposit required by 33-2-202 shall be for the benefit, security, and protection of the policyholders or policyholders and creditors of the insurer in the United States. It shall be maintained as long as there is outstanding any liability of the insurer arising out of its insurance transactions in the United States.

History: En. Sec. 602, Ch. 286, L. 1959; R.C.M. 1947, 40-5204.

Cross-References

Purposes of deposits, 33-2-602.

33-2-205. Trust agreement — approval. (1) The deposit referred to in 33-2-202 shall be made under a written trust agreement between the insurer and the trustee, consistent with the provisions of this part, and shall be authenticated in such form and manner as the commissioner may designate or approve.

(2) The agreement shall not be effective until filed with and approved in writing by the commissioner. The commissioner shall not approve any trust agreement found by him not to be in compliance with law or the terms of which do not in fact provide reasonably adequate protection for the insurer's policyholders or policyholders and creditors in the United States.

History: En. Sec. 603, Ch. 286, L. 1959; R.C.M. 1947, 40-5205.

Cross-References

Trust Code, Title 72, ch. 33 through 36.

33-2-206. Authority to execute trust agreement. An alien insurer using or proposing to use Montana as a state of entry to transact insurance in the United States, whether or not it is then authorized to transact insurance in this state, is authorized to make and execute any trust agreement required by this part.

History: **En. Sec. 604, Ch. 286, L. 1959; R.C.M. 1947, 40-5206.**

33-2-207. Amendment of trust agreement. A trust agreement may be amended, but the amendment shall not be effective until filed with and approved in writing by the commissioner as being in compliance with this part.

History: **En. Sec. 605, Ch. 286, L. 1959; R.C.M. 1947, 40-5207.**

33-2-208. Withdrawal of approval. The commissioner's approval of any trust agreement or of any amendment thereof may be withdrawn by the commissioner if he finds upon hearing, after notice thereof to the insurer and the trustee or trustees, that the requisites for such approval, as provided in this part, no longer exist.

History: **En. Sec. 606, Ch. 286, L. 1959; R.C.M. 1947, 40-5208.**

Cross-References

Hearing and notice requirements, Title 33, ch. 1, part 7.

33-2-209. Title to trusteed assets. Title to the trusteed assets is vested in the trustee or trustees and their successors for the purposes of the trust deposit, and the trust agreement shall so provide.

History: **En. Sec. 607, Ch. 286, L. 1959; R.C.M. 1947, 40-5209.**

33-2-210. Assets kept separate. The trustee shall keep the trusteed assets separate from other assets and shall maintain a record thereof sufficient to identify trusteed assets at all times.

History: **En. Sec. 608, Ch. 286, L. 1959; R.C.M. 1947, 40-5210.**

33-2-211. Statement of trustee. (1) The trustee of trusteed assets shall, from time to time, file with the commissioner statements, in such form as he may designate and request in writing, certifying the character of such assets and the amounts thereof.

(2) If the trustee fails to file any such statement after request therefor and expiration of a reasonable time thereafter, the commissioner may suspend or revoke the certificate of authority of the insurer.

History: **En. Sec. 609, Ch. 286, L. 1959; R.C.M. 1947, 40-5211.**

Cross-References

Trust administration, Title 72, ch. 34.

33-2-212. Examination of assets. The commissioner may examine trusteed assets of any insurer at any time in accordance with the same conditions and procedures as govern the examination of insurers in general under chapter 1 of this title.

History: **En. Sec. 610, Ch. 286, L. 1959; R.C.M. 1947, 40-5212.**

Cross-References

Revocation of certificate of authority, 33-2-118, 33-2-119.

33-2-213. Withdrawal of assets. (1) A trust agreement under this part must provide, in substance, that withdrawals of trusteed assets may not be made by the insurer or permitted by the trustee without the written authorization or approval of the commissioner in advance of the withdrawal, except as follows:

(a) any or all income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager;

(b) for substitution, coincidentally with a withdrawal, of other securities or assets of value at least equal in amount to those being withdrawn if the substituted securities or assets are eligible for investment of the funds of domestic insurers under chapter 12, if the withdrawal is requested in writing by the insurer's United States manager pursuant to general or specific written authority previously given or delegated by the insurer's board of directors or other similar governing body and a copy of the authority has been filed with the trustee;

(c) for the purpose of making deposits required by law in any state in which the insurer is or becomes an authorized insurer, for the protection of the insurer's policyholders or policyholders and creditors in such state or in the United States, if a withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required under 33-2-111(1)(c)(i) and (1)(c)(ii). The trustee shall transfer any assets withdrawn and in the amount required to be deposited in the other state direct to the depositary required to receive the deposit in the other state, as certified in writing by the public official having supervision of insurance in the other state.

(d) for the purpose of transferring the trusteed assets to an official liquidator, conservator, or rehabilitator pursuant to the order of a court of competent jurisdiction.

(2) The commissioner shall authorize or approve withdrawal of only the assets that are in excess of the amount of assets required to be held in trust under 33-2-202 or as may otherwise be consistent with the provisions of this part.

(3) If at any time the insurer becomes insolvent or if its assets held in the United States are less in amount than as required under 33-2-111(1)(c), the commissioner shall in writing order the trustee to suspend the right of the insurer or any other person to withdraw assets as authorized under subsections (1)(a), (1)(b), and (1)(c), and the trustee shall comply with the order and until the further order of the commissioner.

History: En. Sec. 611, Ch. 286, L. 1959; R.C.M. 1947, 40-5213; amd. Sec. 38, Ch. 304, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 304 in (1)(b) substituted reference to chapter 12 for reference to chapter 2, part 8; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Trust administration, Title 72, ch. 34.

33-2-214. Substitution of trustee. (1) A new trustee or new trustees may be substituted for the original trustee or trustees of trusteed assets in the event of a vacancy or for other proper cause. Any such substitution shall be subject to the commissioner's approval.

(2) If the trustees of any trusteed assets heretofore created are individuals and if the number of such trustees is reduced to less than three by death, resignation, or otherwise, the commissioner shall require that there be substituted for such trustees a bank or trust company in this state approved by him.

History: En. Sec. 612, Ch. 286, L. 1959; R.C.M. 1947, 40-5214.

33-2-215. Canadian insurers. The provisions of this part applicable to a United States manager shall, in the case of insurers domiciled in Canada, be deemed to refer to the president, vice-president, secretary, or treasurer of such a Canadian insurer.

History: En. Sec. 613, Ch. 286, L. 1959; R.C.M. 1947, 40-5215.

Part 3

Authorization of Surplus Line Insurers, Insurance Producers, and Insurance

33-2-301. Short title — purpose — definitions. (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) This part must be applied to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

(a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(b) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines insurance producer may place surplus lines insurance under 33-2-307.

(c) "Export" means to place surplus lines insurance with an unauthorized insurer.

(d) "Producing insurance producer" means the individual insurance producer dealing directly with the person seeking insurance.

(e) "Surplus lines insurance" means any insurance on risks resident, located, or to be performed in this state permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance. The term does not include the kinds of insurance exempted under 33-2-317.

(f) "Surplus lines insurance producer" means an individual, partnership, or corporation licensed under 33-2-305 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

(g) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states.

History: En. Sec. 184, Ch. 286, L. 1959; R.C.M. 1947, 40-3409; amd. Sec. 1, Ch. 537, L. 1987; (3) En. Sec. 2, Ch. 537, L. 1987; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 8, Ch. 379, L. 1995.

33-2-302. Conditions precedent to sale of surplus lines insurance. A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with an unauthorized insurer if:

(1) the insurer is an eligible surplus lines insurer;

(2) the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers or, in the case of a renewal, the line of insurance has not become available from an authorized insurer;

(3) the producing insurance producer makes a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

(4) the insurance is not procured for the purpose of securing:

(a) a lower premium rate than would be accepted by an authorized insurer; or

(b) an advantage in terms of the insurance contract; and

(5) all other requirements of this part are met.

History: En. Secs. 185, 186, Ch. 286, L. 1959; R.C.M. 1947, 40-3410, 40-3411; amd. Sec. 1, Ch. 112, L. 1979; amd. Sec. 3, Ch. 537, L. 1987; amd. Sec. 1, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 3, Ch. 451, L. 1993; amd. Sec. 9, Ch. 379, L. 1995.

Cross-References

Public inspection of official documents, Art. II, sec. 9, Mont. Const.; 2-6-102; 2-6-104.

33-2-303. Filing and endorsement of contract. Each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance under this part must be filed with the commissioner, or with the surplus lines advisory organization formed pursuant to 33-2-321, and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law, under surplus lines insurance producer license No. ....." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent". The surplus lines producer shall properly fill in and sign the endorsement.

History: En. Sec. 187, Ch. 286, L. 1959; R.C.M. 1947, 40-3412; amd. Sec. 4, Ch. 537, L. 1987; amd. Sec. 2, Ch. 285, L. 1989; amd. Sec. 9, Ch. 713, L. 1989.

Cross-References

Minimum policy language simplification standards, 33-15-325.

33-2-304. Surplus lines insurance valid. Insurance contracts procured as surplus lines insurance from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties and shall be given acceptance and recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

History: En. Sec. 188, Ch. 286, L. 1959; R.C.M. 1947, 40-3413; amd. Sec. 5, Ch. 537, L. 1987.

Cross-References

Exception to certificate of authority requirement, 33-2-102.

33-2-305. Licensing of surplus lines insurance producer — fee and bond. (1) A person may not place a contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a property and casualty insurance producer and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property and casualty insurance producer continuously for 5 years or more; and

(d) filed with the commissioner and, for as long as the license remains in effect, kept in force a bond in favor of the state of Montana in the amount of $10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice of termination.

(3) The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license.

History: En. Sec. 189, Ch. 286, L. 1959; R.C.M. 1947, 40-3414; amd. Sec. 6, Ch. 537, L. 1987; amd. Sec. 3, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 1, Ch. 180, L. 1991; amd. Sec. 4, Ch. 451, L. 1993; amd. Sec. 10, Ch. 379, L. 1995.

Cross-References

Licensure of insurance producers, Title 33, ch. 17, part 2.

33-2-306. Surplus lines insurance producer's authority under license — acceptance of business from other insurance producers. (1) Under a surplus lines insurance producer license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual, partnership, or corporation that has not been appointed as an insurance producer in this state and may compensate him therefor.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered.

History: En. Sec. 190, Ch. 286, L. 1959; R.C.M. 1947, 40-3415; amd. Sec. 7, Ch. 537, L. 1987; amd. Sec. 4, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 2, Ch. 180, L. 1991.

33-2-307. Requirements for eligible surplus lines insurers. (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) $7 million. An insurer possessing less than $7 million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon such factors as quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $7 million.

(ii) in the case of Lloyd's or another similar group including incorporated and unincorporated alien insurers, the insurer maintains a trust fund of not less than

$50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. The incorporated members of the group may not engage in any business other than underwriting as a member of the group and must be subject to the same level of solvency regulation and control by the groups of domiciliary regulators as are the unincorporated members. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer not more than 6 months after the close of the period reported upon, or quarterly if considered necessary by the commissioner, and which is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(i) is in unsound financial condition;

(ii) is no longer eligible under subsections (1) through (3);

(iii) has willfully violated the laws of this state; or

(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders.

History: En. Sec. 191, Ch. 286, L. 1959; R.C.M. 1947, 40-3416; amd. Sec. 6, Ch. 303, L. 1981; amd. Sec. 8, Ch. 537, L. 1987; (4) En. Sec. 9, Ch. 537, L. 1987; amd. Sec. 2, Ch. 713, L. 1989; amd. Sec. 5, Ch. 451, L. 1993; amd. Sec. 11, Ch. 379, L. 1995; amd. Sec. 3, Ch. 531, L. 1997.

33-2-308. Evidence of insurance — changes — penalty. (1) Upon placing surplus lines insurance, the surplus lines insurance producer shall promptly issue or deliver to the insured or the producing insurance producer evidence of the insurance, consisting either of the policy as issued by the insurer or, if the policy is not then available, a cover note or certificate of insurance signed or countersigned by the insurance producer. The cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If a direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each insurer.

(2) If after the issuance and delivery of any cover note or certificate there is a change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the surplus lines insurance producer shall promptly issue or deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible under the coverage.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines insurance producer has issued and delivered a cover note or certificate as provided in subsection (2), upon request therefor by the insured, the surplus lines insurance producer shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the cover note or certificate previously issued.

(4) A surplus lines insurance producer who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of a material change with respect to the insurance by delivery to the insured of a substitute cover note or certificate as provided in subsection (2) is guilty of a violation of this code and upon conviction is subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

(5) A surplus lines insurance producer may not issue or deliver an evidence of insurance or purport to insure or represent that insurance will be or has been written by an eligible surplus lines insurer unless he has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that the insurance has been granted.

History: En. Sec. 192, Ch. 286, L. 1959; R.C.M. 1947, 40-3417; amd. Sec. 11, Ch. 537, L. 1987; amd. Sec. 5, Ch. 285, L. 1989; amd. Sec. 10, Ch. 713, L. 1989.

33-2-309. Liability of insurer as to losses and unearned premiums. (1) As to a surplus lines risk that has been assumed by an unauthorized insurer pursuant to The Surplus Lines Insurance Law and if the premium on the surplus lines risk has been received by the surplus lines insurance producer who placed the insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer is considered to have received the premium due to it for the coverage. The insurer is liable to the insured as to losses covered by the insurance and for unearned premiums that may become payable to the insured upon cancellation of the insurance, whether or not in fact the surplus lines insurance producer is indebted to the insurer with respect to the insurance or for any other cause. This provision does not affect rights as between the insurer and the surplus lines insurance producer.

(2) A payment of premium to a surplus lines insurance producer acting for a person other than himself in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered to have subjected itself to the terms of this section.

History: En. Sec. 193, Ch. 286, L. 1959; R.C.M. 1947, 40-3418; amd. Sec. 12, Ch. 537, L. 1987; amd. Sec. 6, Ch. 285, L. 1989; amd. Sec. 11, Ch. 713, L. 1989.

33-2-310. Records and annual statement — affidavit. (1) Each surplus lines insurance producer shall keep a separate record and account of all business transacted under his license, including a copy of each daily report, if any, or of each policy, certificate of insurance, cover note, or other evidence of insurance issued or delivered by him. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

(2) Prior to April 1 of each year the surplus lines insurance producer shall file with the commissioner a statement for the preceding calendar year, showing:

(a) name and address of each insured for whom surplus lines insurance was procured;

(b) name and home office address of each insurer providing the surplus lines insurance;

(c) amount of each surplus lines insurance policy, the premium rate, and the gross premium charged for the policy;

(d) date and term of the policy;

(e) amount of premium returned on each policy canceled or not taken;

(f) amount of tax and other sums to be collected from the insured;

(g) identity of the producing insurance producer; and

(h) such additional information as the commissioner may reasonably require.

(3) Each producing insurance producer shall execute and each surplus lines insurance producer shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of such efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing insurance producer shall state in the affidavit that he has expressly advised the insured prior to placing the insurance that:

(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.

History: En. Sec. 194, Ch. 286, L. 1959; R.C.M. 1947, 40-3419; amd. Sec. 13, Ch. 537, L. 1987; amd. Sec. 7, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989.

Cross-References

Reports, fees, and taxes, Title 33, ch. 2, part 7.

33-2-311. Tax on surplus lines. There is imposed upon premiums collected for surplus lines insurance transacted in this state a tax at the same rate and computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, are not considered to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus lines insurance producer shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by him during the preceding calendar year. If a surplus lines insurance policy covers risks or exposures only partially in this state, the tax payable must be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

History: En. Sec. 195, Ch. 286, L. 1959; R.C.M. 1947, 40-3420; amd. Sec. 2, Ch. 664, L. 1979; amd. Sec. 14, Ch. 537, L. 1987; amd. Sec. 2, Ch. 622, L. 1987; amd. Sec. 2, Ch. 713, L. 1989.

Cross-References

General fund — deposits by Insurance Commissioner, 17-2-121.

33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee. (1) A surplus lines insurance producer who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to a penalty of $25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing the commissioner. The penalty when collected, unless collected by a justice's court, must be paid to the state treasurer and placed to the credit of the general fund. The surplus lines insurance producer license is also subject to revocation as provided in 33-2-313.

(2) If a surplus lines insurance producer does not pay the stamping fee provided for in 33-2-321, the commissioner or the surplus lines advisory organization formed pursuant to 33-2-321 may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid.

History: En. Sec. 196, Ch. 286, L. 1959; R.C.M. 1947, 40-3421; amd. Sec. 15, Ch. 537, L. 1987; amd. Sec. 20, Ch. 557, L. 1987; amd. Sec. 8, Ch. 285, L. 1989; amd. Sec. 2, Ch. 713, L. 1989; amd. Sec. 6, Ch. 451, L. 1993.

Cross-References

Duties of Attorney General, 2-15-501.

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

33-2-313. Revocation or suspension of producer license. (1) The commissioner shall revoke or suspend any surplus lines insurance producer license, together with any license as an insurance producer:

(a) if the insurance producer fails to file an annual statement or to remit the tax as required by law;

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine the records, as required by law;

(c) if the insurance producer falsifies the affidavit required by 33-2-310(3);

(d) if the insurance producer closes the surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(e) if the insurance producer violates any provision of this part; or

(f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension or revocation of insurance producer licenses apply to suspension or revocation of a surplus lines insurance producer license.

(3) An insurance producer whose license has been revoked or suspended may not again be licensed within 1 year after revocation or suspension or until the insurance producer pays all penalties and delinquent taxes that are owed.

History: En. Sec. 197, Ch. 286, L. 1959; R.C.M. 1947, 40-3422; amd. Sec. 16, Ch. 537, L. 1987; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 7, Ch. 451, L. 1993.

Cross-References

Records required, 33-2-310.

Tax to be remitted, 33-2-311.

Insurance producer's license — grounds for revocation, 33-17-1001.

33-2-314. Actions against insurer — venue. Every unauthorized insurer issuing a surplus lines insurance policy under this part is considered to be doing business in this state as an unauthorized insurer and may be sued in this state upon any cause of action arising under any insurance contract so made by it. Such suit must be brought in the district court of the county wherein the plaintiff resides.

History: En. Sec. 198, Ch. 286, L. 1959; R.C.M. 1947, 40-3423; amd. Sec. 17, Ch. 537, L. 1987.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

Unauthorized Insurers Process Act, 33-1-611 through 33-1-616.

33-2-315. Commissioner appointed process agent — service of process. (1) Every surplus lines insurer before transacting surplus lines insurance under this part shall in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

(2) Service upon such an insurer must be made upon the commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603.

History: En. Sec. 199, Ch. 286, L. 1959; R.C.M. 1947, 40-3424; amd. Sec. 18, Ch. 537, L. 1987.

Cross-References

Special service requirement, Rule 4D(4), M.R.Civ.P. (see Title 25, ch. 20).

33-2-316. Rules. (1) The commissioner shall make reasonable rules, consistent with this part, for any of the following purposes:

(a) effectuation of The Surplus Lines Insurance Law;

(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; and

(c) establishment, procedures, and operations of the surplus lines advisory organization formed pursuant to 33-2-321 or others designed to assist a surplus lines insurance producer to comply with The Surplus Lines Insurance Law.

(2) The rules adopted pursuant to subsection (1) are subject to the procedures and carry the penalty provided by 33-1-313.

History: En. Sec. 200, Ch. 286, L. 1959; R.C.M. 1947, 40-3425; amd. Sec. 20, Ch. 537, L. 1987; amd. Sec. 9, Ch. 285, L. 1989; amd. Sec. 12, Ch. 713, L. 1989.

Cross-References

Montana Administrative Procedure Act — promulgation of rules, Title 2, ch. 4.

Promulgation of rules by Commissioner, 33-1-313.

33-2-317. Exemptions. The Surplus Lines Insurance Law does not apply to reinsurance or to the following kinds of insurance when placed by a licensed insurance producer of this state:

(1) wet marine insurance;

(2) insurance on subjects located, residing, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of the aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft.

History: En. Sec. 201, Ch. 286, L. 1959; R.C.M. 1947, 40-3426; amd. Sec. 21, Ch. 537, L. 1987; amd. Sec. 10, Ch. 285, L. 1989; amd. Sec. 13, Ch. 713, L. 1989; amd. Sec. 4, Ch. 531, L. 1997.

33-2-318 through 33-2-320 reserved.

33-2-321. Surplus lines advisory organizations — examination by commissioner — stamping fee. (1) A surplus lines advisory organization of surplus lines insurance producers may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;

(b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether the surplus lines insurance complies with this part;

(c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market; and

(d) receive and disseminate to its members information relative to surplus lines insurance.

(2) The surplus lines advisory organization shall file with the commissioner:

(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;

(b) a copy of its bylaws, rules, and regulations governing its activities;

(c) a current list of its members;

(d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at his direction may be served; and

(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).

(3) The commissioner may make or cause to be made an examination of the surplus lines advisory organization. The surplus lines advisory organization shall pay the reasonable cost of an examination upon presentation to it by the commissioner of a detailed account of the cost. The officers, managers, insurance producers, and employees of the surplus lines advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the examined surplus lines advisory organization and shall notify the surplus lines advisory organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the

surplus lines advisory organization or any of its members to be in violation of this part, he may issue an order requiring the discontinuance of the violation.

(4) The commissioner may by order compel a surplus lines insurance producer to join the surplus lines advisory organization as a condition of continued licensure under this part.

(5) The surplus lines advisory organization may collect a stamping fee not to exceed 1% of the premium payable for surplus lines insurance transacted by its members in this state. The commissioner shall establish the stamping fee by rule. The surplus lines advisory organization shall use the stamping fees it collects to pay its expenses.

History: **En. Sec. 10, Ch. 537, L. 1987; amd. Sec. 11, Ch. 285, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989.**

33-2-322 through 33-2-325 reserved.

33-2-326. Penalties. A surplus lines insurance producer who in this state represents or aids an unauthorized insurer in violation of this part is guilty of a misdemeanor and shall be fined not more than $1,000 or be imprisoned in the county jail for a term no longer than 6 months, or both.

History: **En. Sec. 19, Ch. 537, L. 1987; amd. Sec. 2, Ch. 713, L. 1989.**

Part 4 reserved

Part 5

Assets and Liabilities — Reserves

33-2-501. Assets allowed. In any determination of the financial condition of an insurer, there must be allowed as assets only assets that are owned by the insurer and that consist of:

(1) cash in the possession of the insurer or in transit under its control and including the true balance of any deposit in a solvent bank or trust company;

(2) investments, securities, properties, and loans acquired or held in accordance with this code and in connection therewith the following items:

(a) interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest;

(b) declared and unpaid dividends on stock and shares unless the amount has otherwise been allowed as an asset;

(c) interest due or accrued upon a collateral loan in an amount not to exceed 1 year's interest on the loan;

(d) interest due or accrued on deposits in solvent banks and trust companies and interest due or accrued on other assets, if the interest is in the judgment of the commissioner a collectible asset;

(e) interest due or accrued on a mortgage loan in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes on the property over the unpaid principal. Interest accrued for a period in excess of 18 months may not be allowed as an asset.

(f) rent due or accrued on real property if the rent is not in arrears for more than 3 months and rent more than 3 months in arrears if the payment of the rent is adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral;

(g) the unaccrued portion of taxes paid prior to the due date on real property;

(3) premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) the net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer;

(5) premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable on the premiums. The limitation in this subsection does not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply;

(7) notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on that basis, to the extent of the unearned premium reserves carried on the policies;

(8) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under chapter 2, part 12;

(9) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds or from any suspended banking institution, to the extent considered by the commissioner available for the payment of losses and claims and at values to be determined by the commissioner;

(11) electronic data processing equipment if the cost of the equipment is amortized in full over a period of not to exceed 8 calendar years. However, the amount of the asset allowed may not exceed 1% of the total of the other allowable assets of the insurer.

(12) all assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon in the annual statement;

(13) other assets, not inconsistent with the provisions of this section, considered by the commissioner to be available for the payment of losses and claims, at values to be determined by the commissioner.

History: En. Sec. 82, Ch. 286, L. 1959; R.C.M. 1947, 40-3001; amd. Sec. 1, Ch. 570, L. 1979; amd. Sec. 40, Ch. 596, L. 1993; amd. Sec. 12, Ch. 379, L. 1995.

Cross-References

Net premium tax — admitted assets, 33-2-705.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

33-2-502. Assets expressly not allowed. In addition to assets impliedly excluded by the provisions of 33-2-501, the following expressly may not be allowed as assets in any determination of the financial condition of an insurer:

(1) goodwill, trade names, and other like intangible assets;

(2) advances to officers, other than policy loans, whether secured or not, and advances to employees, insurance producers, and other persons on personal security only;

(3) stock issued and owned by the insurer, any equity in the stock issued by the insurer, loans secured by the stock issued by the insurer, or any proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation, or business unit;

(4) furniture, fixtures (other than electronic data processing machines authorized under 33-2-501(11)), furnishings, safes, vehicles, libraries, stationery, literature, and supplies, except:

(a) in the case of title insurers, materials and plants that the insurer is expressly authorized to invest in under 33-25-211; and

(b) in the case of any insurer, personal property that the insurer is permitted to hold pursuant to chapter 12, that is acquired through foreclosure of chattel mortgages acquired pursuant to 33-12-207 or 33-12-307, or that is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes;

(5) the amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value of the investments as determined under this title; and

(6) prepaid expenses.

History: En. Sec. 84, Ch. 286, L. 1959; R.C.M. 1947, 40-3003; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 39, Ch. 304, L. 1999; amd. Sec. 13, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 304 at end of (4)(a) substituted "33-25-211" for "33-2-851"; in (4)(b) substituted reference to chapter 12 for reference to chapter 2, part 8, and substituted "33-12-207 or 33-12-307" for "33-2-831"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 472 inserted (6) disallowing prepaid expenses as assets; and made minor changes in style. Amendment effective October 1, 1999.

33-2-503. Treatment of assets. Assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to the insurer as prescribed by the commissioner, or otherwise in his discretion.

History: En. Sec. 83, Ch. 286, L. 1959; R.C.M. 1947, 40-3002.

33-2-504 through 33-2-510 reserved.

33-2-511. Liabilities chargeable against assets. In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

(1) the amount of its capital stock outstanding, if any;

(2) the amount, estimated consistent with the provisions of this code, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof;

(3) with reference to life and disability insurance and annuity contracts:

(a) the amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to this code which are applicable thereto;

(b) reserves for disability benefits, for both active and disabled lives;

(c) reserves for accidental death benefits;

(d) any additional reserves which may be required by the commissioner, consistent with practice formulated or approved by the national association of insurance commissioners, on account of such insurance;

(4) with reference to insurance other than specified in subsection (3) of this section and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this part;

(5) taxes, expenses, and other obligations due or accrued at the date of the statement.

History: En. Sec. 85, Ch. 286, L. 1959; R.C.M. 1947, 40-3004.

33-2-512. Unearned premium reserve for property, casualty, and surety. (1) As to insurance against loss or damage to property, except as provided in 33-2-513, and as to all general casualty insurance and surety insurance, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserves shall be equal to the unearned portions of the gross premiums in force after deducting applicable

reinsurance in solvent insurers as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premium in force, less applicable reinsurance in solvent insurers, to be held as an unearned premium reserve, shall be computed according to the following table:

Term for Which Policy Was Written	Reserve for Unearned Premium
1 year or less	1/2
2 years	1st year 3/4 2nd year 1/4
3 years	1st year 5/6 2nd year 1/2 3rd year 1/6
4 years	1st year 7/8 2nd year 5/8 3rd year 3/8 4th year 1/8
5 years	1st year 9/10 2nd year 7/10 3rd year 1/2 4th year 3/10 5th year 1/10
Over 5 years	pro rata

(3) In lieu of computation according to the foregoing table, the insurer at its option may compute all of such reserves on a monthly or more frequent pro rata basis.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without approval of the commissioner.

(5) This section does not apply to title insurance.

History: En. Sec. 86, Ch. 286, L. 1959; R.C.M. 1947, 40-3005.

Cross-References

Title insurance reserves, 33-2-517.

33-2-513. Unearned premium reserve for marine and transportation insurance. As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned and the commissioner may require the insurer to carry a reserve equal to 100% of premiums on trip risks written during the month ended as of the date of statement.

History: En. Sec. 87, Ch. 286, L. 1959; R.C.M. 1947, 40-3006.

33-2-514. Reserve for disability insurance. (1) For all disability insurance policies, the insurer shall maintain an active life reserve that places a sound value on its liabilities under the policies and that may not be less than the pro rata gross unearned premiums for the policies.

(2) The commissioner may promulgate rules to define additional standards for reserve requirements.

History: En. Sec. 88, Ch. 286, L. 1959; R.C.M. 1947, 40-3007; amd. Sec. 5, Ch. 531, L. 1997.

33-2-515. Repealed. Sec. 44, Ch. 531, L. 1997.

History: En. Sec. 89, Ch. 286, L. 1959; R.C.M. 1947, 40-3008.

33-2-516. Inadequate reserves — increase required. If loss experience shows that an insurer's loss reserves, however computed or estimated, are inadequate, the commissioner shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate.

History: En. Sec. 90, Ch. 286, L. 1959; R.C.M. 1947, 40-3009.

33-2-517. Title insurance reserves. (1) In addition to an adequate reserve as to outstanding losses as required under 33-2-511, a title insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

(a) Ten percent of the total amount of the risk premiums written in the calendar year for title insurance contracts must be assigned originally to the reserve.

(b) During each of the 20 years next following the year in which the title insurance contract was issued, the reserve applicable to the contract must be reduced by 5% of the original amount of the reserve.

(2) The reserve sums required by subsection (1) for unearned premiums on contracts of title insurance must at all times and for all purposes be considered and constitute unearned portions of the original premiums and must be held in trust for the benefit of policyholders.

(3) The reduction of the unearned premium reserve required by subsection (1)(b) must be made for all title insurance contracts issued after December 31, 1958, with respect to which 10% of the risk premiums have been assigned to the reserve pursuant to subsection (1)(a). If the insurer has not reduced the amount of its unearned premium reserves pursuant to subsection (1)(b) for a previous year or years, the insurer shall make the reduction for the prior year or years in its next accounting year.

History: En. Sec. 91, Ch. 286, L. 1959; amd. Sec. 1, Ch. 96, L. 1977; R.C.M. 1947, 40-3010; amd. Sec. 6, Ch. 531, L. 1997.

Cross-References

Title insurance — general provisions, Title 33, ch. 25.

33-2-518. Loss and loss expense reserves for property and casualty insurance. (1) (a) In determining the financial condition of a property and casualty insurer for the purpose of applying the provisions of this chapter and in any financial statement or report of an insurer, loss reserves and loss expense reserves at least equal to the amounts required under the provisions of this section must be included in the insurer's liabilities. The date from which the determination, statement, or report is made is, for the purpose of this part, the date of determination.

(b) Accepted actuarial standards as adopted by the actuarial standards board must be taken into consideration for the purpose of determining the loss reserves and loss expense reserves.

(2) Except as provided in subsections (3) and (4), the reserves for all outstanding losses and loss expenses must include the following:

(a) the aggregate estimated amounts due or to become due on account of all known losses, claims, and loss expenses incurred but not paid, including the estimated liability on any notice received by the insurer of the occurrence of any event that may result in a loss; and

(b) the aggregate amounts of liability for all losses and loss expenses incurred for which notice has not been received, estimated in accordance with the insurer's prior experience, if any, or otherwise in accordance with Montana industry experience, or countrywide industry experience if this state's experience is not credible, for similar contracts of insurance. The estimated liabilities for losses under all bonds, policies, or contracts of fidelity insurance may not be less than 10% of the net premiums in force, and the estimated liabilities for all of those losses under all the insurer's surety contracts may not be less than 5% of the net premiums in force.

(3) Except as provided in subsection (4), tabular reserves for outstanding losses under policies of workers' compensation insurance may be actuarially calculated for both indemnity and medical payments. The loss adjustment expenses are not eligible for discounting. Tabular reserves are those reserves that are:

(a) calculated using discounts determined with reference to actuarial tables, which incorporate mortality, interest, not to exceed 4%, remarriage, and other contingencies applied to a reasonably determinable payment stream associated with lifetime benefit cases; or

(b) annuities certain, such as those arising from structured settlements.

(4) Whenever, in the judgment of the commissioner, the loss and loss expense reserves of any property and casualty insurer doing business in this state, calculated in accordance with the provisions of this section, are inadequate or excessive, the commissioner may prescribe any other method that will produce adequate and reasonable reserves.

(5) The excess, if any, of statutory reserves over statement reserves must be calculated in accordance with the annual statement instructions adopted by the national association of insurance commissioners.

History: En. Sec. 43, Ch. 531, L. 1997.

33-2-519 and 3-2-520 reserved.

33-2-521. Standard valuation of reserve liabilities law — life insurance. (1) The commissioner shall annually value or cause to be valued the reserve liabilities (reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state and may certify the amount of any reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of reserves. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise.

(2) In lieu of the valuation of the reserves required in this section of any foreign or alien insurer, the commissioner may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section and if the official of the other state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(3) Any insurer that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this section may, with the approval of the commissioner, adopt any lower standard of valuation but not lower than the minimum in this section. For the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required in subsection (4) may not be considered to be the adoption of a higher standard of valuation.

(4) (a) Each life insurer doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule

are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items considered necessary to its scope.

(b) Each life insurer, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subsection (4)(a) an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(c) The commissioner may provide by rule for a transition period for establishing any higher reserves that the qualified actuary may consider necessary in order to render the opinion required by this subsection (4).

(d) Each opinion required by this subsection (4) must be governed by the following provisions:

(i) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.

(ii) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or if the commissioner determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and to prepare any supporting memorandum as is required by the commissioner.

(iii) The opinion must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1996.

(iv) The opinion must apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(v) The opinion must be based on standards adopted from time to time by the actuarial standards board and on additional standards as the commissioner may prescribe by rule.

(vi) In the case of an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(vii) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(viii) Disciplinary action by the commissioner against the insurer or the qualified actuary must be defined in rules by the commissioner.

(ix) Any memorandum in support of the opinion and any other material provided by the insurer to the commissioner in connection with those items must be kept confidential by the commissioner, may not be made public, and is not subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this subsection (4) or by rules promulgated under this subsection (4). However, the memorandum or other material may otherwise be released by the commissioner:

(A) with the written consent of the insurer; or

(B) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the insurer in its marketing, is cited before any governmental agency other than a state insurance department, or is released by the insurer to the news media, all portions of the confidential memorandum are no longer confidential.

(5) For purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in the academy's rules.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(1); amd. Sec. 13, Ch. 379, L. 1995; amd. Sec. 14, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (4)(d)(ix) near middle of first sentence before "subject" inserted "not". Amendment effective October 1, 1999.

33-2-522. Contracts prior to the operative date of 33-20-213 — valuation. (1) This section shall apply to only those policies and contracts issued prior to the operative date of 33-20-213.

(2) Except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts, the minimum standard of valuation on all policies of domestic life insurers issued prior to January 1, 1922, shall be the American experience table of mortality and interest at 3 1/2% per annum, with preliminary term insurance for the first policy year, and for policies of such insurers issued subsequent to December 31, 1921, shall be the American experience table of mortality with interest at 3 1/2% per annum, with preliminary term insurance for the first policy year, except as follows: If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than 20 years from the date of the policy or under an endowment preliminary term policy exceeds that charged for life insurance under 20-payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a 20-payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium reserve sufficient to provide for a pure endowment at the end of the premium payment period equal to the difference between the value at the end of such period of such a 20-payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy.

(3) Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this section.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(2).

33-2-523. Contracts on or after operative date of 33-20-213 — valuation. (1) This section applies to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all the policies and contracts issued prior to October 1, 1995, must be the standard provided by the laws in effect prior to October 1, 1995. Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all policies and contracts must be the commissioner's reserve valuation methods defined in 33-2-525, 33-2-526(3) and (4), and 33-2-537, 5% interest for group annuity and pure endowment contracts, and 3 ½% interest for all other policies and contracts or, in the case of life insurance policies and contracts other than annuity and pure endowment contracts issued on or after March 17, 1973, 4% interest for all other policies issued prior to July 1, 1979, 5 ½% interest for single-premium life insurance policies, and 4 ½% interest for all other policies issued on or after July 1, 1979, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies:

(i) the commissioner's 1941 standard ordinary mortality table for policies issued prior to the operative date of 33-20-206, as amended, and the commissioner's 1958 standard ordinary mortality table for policies issued on or after that operative date but prior to January 1, 1989, except that for any category of the policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at the option of the insurer, with the approval of the commissioner, according to an age younger than the actual age of the insured; or

(ii) for policies issued on or after January 1, 1989:

(A) the commissioner's 1980 standard ordinary mortality table;

(B) at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors; or

(C) any ordinary mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for policies;

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the 1941 standard industrial mortality table for policies issued prior to the operative date of 33-20-207 and, for policies issued on or after that operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the group annuity mortality table for 1951, any modification of the table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either the tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any table must, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table must be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis, and other special benefits, the tables as may be approved by the commissioner.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 1, Ch. 346, L. 1979; amd. Sec. 1, Ch. 520, L. 1983; amd. Sec. 14, Ch. 379, L. 1995; amd. Sec. 142, Ch. 42, L. 1997.

33-2-524. Individual and group annuity and pure endowment contracts — valuation. (1) Except as provided in 33-2-527, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this section, as defined herein, and for all annuities and pure endowments purchased on or after that operative date under group annuity and pure endowment contracts is the commissioner's reserve valuation methods defined in 33-2-525 and the following tables and interest rates:

(a) for individual annuity and pure endowment contracts issued prior to July 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any modification of this table approved by the commissioner and 6% interest for single-premium immediate annuity contracts and 4% interest for all other individual annuity and pure endowment contracts;

(b) for individual single-premium immediate annuity contracts issued on or after July 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any individual annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such contracts or any modification of such tables approved by the commissioner and 7 ½% interest;

(c) for individual annuity and pure endowment contracts issued on or after July 1, 1979, other than single-premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any individual annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such contracts or any modification of such tables approved by the commissioner and 5 ½% interest for single-premium deferred annuity and pure endowment contracts and 4 ½% interest for all other such individual annuity and pure endowment contracts;

(d) for all annuities and pure endowments purchased prior to July 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any modification of the table approved by the commissioner and 6% interest;

(e) for all annuities and pure endowments purchased on or after July 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any group annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such annuities and pure endowments or any modification of such tables approved by the commissioner and 7 ½% interest.

(2) After March 17, 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of subsection (1) after a specified date before January 1, 1979, which shall be the operative date of subsection (1) for such insurer. An insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1979.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 9, Ch. 198, L. 1979; amd. Sec. 2, Ch. 346, L. 1979; amd. Sec. 2, Ch. 520, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-2-525. Commissioner's reserve valuation method. (1) Except as otherwise provided in subsection (4) of this section, 33-2-526(3) and (4), and 33-2-537(2), reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, must be the excess, if any, of the present value, at the date of valuation, of future guaranteed benefits provided for by the policies, over the then present value of any future modified net premiums. The modified net premiums for any policy must be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all modified net premiums must be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subsection (1)(a) over subsection (1)(b), as follows:

(a) a net level annual premium equal to the present value, at the date of issue, of benefits provided for after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium may not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of the policy.

(b) a net 1-year term premium for benefits provided for in the first policy year.

(2) (a) For each life insurance policy issued on or after January 1, 1987, for which the contract premium in the first policy year exceeds that of the second year, for which a comparable additional benefit is not provided in the first year for the excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than the excess premium, the reserve according to the commissioner's reserve valuation method, as of any policy anniversary occurring on or before the assumed ending date as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, is, except as otherwise provided in 33-2-526, the greater of the reserve as of the policy anniversary calculated as described in subsection (1) or the reserve as of the policy anniversary calculated as described in subsection (1) with the following exceptions:

(i) the value defined in subsection (1)(a) is reduced by 15% of the amount of the excess first-year premium;

(ii) all present values of benefits and premiums are determined without reference to premiums or benefits provided for in the policy after the assumed ending date;

(iii) the policy is assumed to mature on the assumed ending date as an endowment; and

(iv) the cash surrender value provided on the assumed ending date is considered an endowment benefit.

(b) In making the comparisons in subsection (2)(a), the mortality and interest bases stated in 33-2-523 and 33-2-527 must be used.

(3) Reserves according to the commissioner's reserve valuation method for the following must be calculated by a method consistent with the principles of this section, except that any extra premiums charged because of impairments or special hazards must be disregarded in the determination of modified net premiums:

(a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as amended;

(c) disability and accidental death benefits in all policies and contracts; and

(d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

(4) (a) Subsection (4)(b) applies to any annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as amended.

(b) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, must be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations required by the terms of the contract that become payable prior to the end of the respective contract year. The future guaranteed benefits must be determined by using the mortality table, if any, and the interest rate or rates specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 3, Ch. 346, L. 1979; amd. Sec. 6, Ch. 520, L. 1983; amd. Sec. 15, Ch. 379, L. 1995.

33-2-526. Limits — options — minimum reserves. (1) An insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits issued on or after October 1, 1995, may not be less than the aggregate reserves calculated in accordance with the methods set forth in 33-2-525, 33-2-537(2), subsection (3) of this section, and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(2) Reserves for all policies and contracts issued prior to October 1, 1995, may be calculated, at the option of the insurer, according to standards that produce greater aggregate reserves for those policies and contracts than the minimum reserves required by the laws in effect immediately prior to October 1, 1995. Reserves for any category of policies, contracts, or benefits as established by the commissioner, issued on or after October 1, 1995, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for a category than those calculated according to the minimum standard provided in this section, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, may not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for a category.

(3) If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve on the policy or contract but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract must be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract or the reserve calculated by the method actually used for the policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in 33-2-524 and 33-2-527.

(4) For every life insurance policy issued after December 30, 1986, for which the gross premium in the first policy year exceeds that of the second year, for which a comparable additional benefit is not provided in the first year for an excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than the excess premium, subsections (1) through (3) of this section must be applied as if the method actually used in calculating the reserve for the policy were the method described in 33-2-525(1). The minimum reserve at each policy anniversary of the policy must be the greater of the minimum reserve calculated in accordance with 33-2-525 and the minimum reserve calculated in accordance with this section.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part); amd. Sec. 4, Ch. 346, L. 1979; amd. Sec. 7, Ch. 520, L. 1983; amd. Sec. 16, Ch. 379, L. 1995.

33-2-527. Interest rates — determination of minimum standard valuation. (1) The calendar year statutory valuation interest rates as established in this section must be used in determining the minimum standard for the valuation of:

(a) all life insurance policies issued in a particular calendar year on or after January 1, 1989;

(b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984;

(c) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts.

(2) Except as provided in subsection (3), the calendar year statutory valuation interest rates are determined as follows and the results rounded to the nearer 1/4 of 1%, when R_1 is the lesser of R and .09, R_2 is the greater of R and .09, R is the reference interest rate established in 33-2-529, and W is the weighting factor established in 33-2-528:

(a) for life insurance:

Interest rate = $.03 + W(R_1 - .03) + (W/2)(R_2 - .09)$;

(b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

Interest rate = $.03 + W(R - .03)$;

(c) for other annuities with:

(i) cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subsection (2)(b), the formula for life insurance stated in subsection (2)(a) applies to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single-premium immediate annuities stated in subsection (2)(b) applies to annuities and guaranteed interest contracts with guarantee durations of 10 years or less;

(ii) no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single-premium immediate annuities stated in subsection (2)(b) applies; and

(iii) cash settlement options and guaranteed interest contracts with cash settlement options valued on a change-in-fund basis, the formula for single-premium immediate annuities stated in subsection (2)(b) applies.

(3) If the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than 1/2 of 1%, the calendar year statutory valuation interest rate for such life insurance policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of this subsection, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980 (using the reference interest rate defined for 1979) and must be determined for each subsequent calendar year regardless of when 33-20-208 becomes operative.

History: En. Sec. 3, Ch. 520, L. 1983.

33-2-528. Interest rate weighting factor. (1) The weighting factors referred to in the formulas stated in 33-2-527 are as follows:

(a) (i) for life insurance:

Guarantee Duration in Years	Weighting Factors
10 or less	.50
More than 10 but not more than 20	.45
More than 20	.35

(ii) for life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, that are guaranteed in the original policy;

(b) .80 for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options;

(c) for other annuities and for guaranteed interest contracts, except as stated in subsection (1)(b), according to the guarantee duration established in subsections (1)(c)(i) through (1)(c)(iii) and the rules and definitions established in subsections (2) through (4):

(i) for annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration in Years	Weighting Factor for Plan Type		
	A	B	C
5 or less	.80	.60	.50
More than 5 but not more than 10	.75	.60	.50
More than 10 but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

	Plan Type		
(ii)	A	B	C
for annuities and guaranteed interest contracts valued on a change-in-fund basis, the factors shown in subsection (1)(c)(i) increased by:	.15	.25	.05

	Plan Type		
(iii)	A	B	C
for annuities and guaranteed interest contracts valued on an issue year basis, other than those without cashsettlement options, that do not guarantee interest on considerations received more than 1 year after issue or purchase and for annuities and guaranteed interest contracts valued on a change-in-fund basis that do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors set forth in subsection (1)(c)(i) or derived in subsection (1)(c)(ii) increased by:	.05	.05	.05

(2) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year

statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities without cash settlement options and for guaranteed interest contracts without cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(3) Plan types used in subsection (1)(c) are:

(a) Plan Type A—No withdrawal is permitted or at any time policyholder may withdraw funds only:

(i) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(ii) without an adjustment but in installments over 5 years or more; or

(iii) as an immediate life annuity.

(b) Plan Type B—(i) Before expiration of the interest rate guarantee, no withdrawal is permitted or a policyholder may withdraw funds only:

(A) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(B) without an adjustment but in installments over 5 years or more.

(ii) At the end of the interest rate guarantee, funds may be withdrawn without an adjustment in a single sum or installments over less than 5 years.

(c) Plan Type C—A policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than 5 years either:

(i) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or

(ii) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(4) (a) An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change-in-fund basis. Guaranteed interest contracts without cash settlement options and other annuities without cash settlement options must be valued on an issue year basis.

(b) As used in subsection (4):

(i) issue year basis of valuation is a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract; and

(ii) change-in-fund basis of valuation is a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

History: En. Sec. 4, Ch. 520, L. 1983; amd. Sec. 17, Ch. 379, L. 1995.

33-2-529. Reference interest rate. (1) The reference interest rate referred to in the formulas in 33-2-527 is:

(a) for all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's monthly average composite yield on seasoned corporate bonds;

(b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's monthly average composite yield on seasoned corporate bonds;

(c) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's monthly average composite yield on seasoned corporate bonds;

(d) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's monthly average composite yield on seasoned corporate bonds;

(e) for other annuities without cash settlement options and for guaranteed interest contracts without cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's monthly average composite yield on seasoned corporate bonds; or

(f) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a change-in-fund basis, except as stated in subsection (1)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's monthly average composite yield on seasoned corporate bonds.

(2) If Moody's monthly average composite yield on seasoned corporate bonds is no longer published by Moody's investors service, inc., or if the national association of insurance commissioners determines that Moody's monthly average composite yield on seasoned corporate bonds, as published by Moody's investors service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate adopted by the national association of insurance commissioners and approved by rule promulgated by the commissioner may be substituted.

History: En. Sec. 5, Ch. 520, L. 1983; amd. Sec. 18, Ch. 379, L. 1995.

33-2-530 reserved.

33-2-531. Deposit of reserves — domestic life insurers. (1) Domestic life insurers shall deposit and maintain on deposit, in securities and assets, with depositaries and subject to conditions as provided for in part 6 of this chapter, an amount not less than the reserves on its outstanding life insurance policies and annuity contracts, as valued under 33-2-521 through 33-2-526, minus policy loans.

(2) Annually on or before April 1, the insurer shall deposit any additional securities or assets required under subsection (1) and related to the increase of the reserves, minus policy loans, during the preceding calendar year, as determined from the insurer's annual statement as at December 31 of the preceding year.

(3) A domestic stock life insurer may credit toward the deposit the amount of any other deposit of the insurer held under part 6 of this chapter for the protection of its policyholders or of its policyholders and creditors.

(4) Deposits of the reserves of a domestic life insurer under this section must consist of securities and assets acquired and valued in accordance with chapter 12 and part 5 of this chapter.

(5) Real estate mortgage loans and chattel mortgage loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner. The statement is subject to audit at all times by the commissioner. Nonnegotiable securities deposited with the commissioner must be accompanied by transfer powers in due form. If the insurer uses real estate acquired under 33-12-207 as a deposit, then a deed of trust, mortgage, or other instrument sufficient to convey a

security interest in the real estate, in a form acceptable to the commissioner, must be completed in due form and recorded prior to being deposited with the commissioner.

(6) If default occurs in the payment of interest or principal of any deposited security and the default continues for a period of 120 days, the commissioner may declare the security no longer eligible for deposit under this section.

History: En. Sec. 93, Ch. 286, L. 1959; R.C.M. 1947, 40-3012; amd. Sec. 2, Ch. 570, L. 1979; amd. Sec. 1, Ch. 427, L. 1981; amd. Sec. 19, Ch. 379, L. 1995; amd. Sec. 40, Ch. 304, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 304 in (4) substituted reference to chapter 2, part 5, and chapter 12 for reference to chapter 2, parts 5 and 8; in (5) substituted "33-12-207" for "33-2-832"; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Deposit requirement, 33-2-111.

Deposits — general provisions, Title 33, ch. 2, part 6.

Duration and release of deposit, 33-2-612.

Mortgages of real property, Title 71, ch. 1, part 2.

Deeds of trust, Title 71, ch. 1, part 3.

33-2-532. Valuation of bonds. (1) (a) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(i) if purchased at par, at the par value;

(ii) if purchased above or below par, on the basis of the purchase price adjusted to bring the value to par at maturity and to yield in the meantime the effective rate of interest at which the purchase was made or, in lieu of this method, according to an accepted method of valuation as is approved by the commissioner by rule.

(b) Purchase price may not be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of the securities.

(c) Unless otherwise provided by valuation established or approved by the commissioner, a security may not be carried at above the call price for the entire issue during any period within which the security may be so called.

(2) The commissioner has full discretion in determining the method of calculating values according to the rules set forth in this section.

History: En. Sec. 94, Ch. 286, L. 1959; R.C.M. 1947, 40-3013; amd. Sec. 41, Ch. 596, L. 1993.

33-2-533. Valuation of other securities. (1) Securities, other than those referred to in 33-2-532, held by an insurer must be valued, in the discretion of the commissioner, at their market value, at their appraised value, or at prices determined by the commissioner as representing their fair market value as established by rule.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with the method of computation that the commissioner may approve.

History: En. Sec. 95, Ch. 286, L. 1959; R.C.M. 1947, 40-3014; amd. Sec. 42, Ch. 596, L. 1993.

33-2-534. Valuation of property. (1) Real property acquired pursuant to a mortgage loan or contract for sale may not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of acquisition, together with any taxes and expenses paid or incurred in connection with the acquisition, the cost of improvements made by the insurer after acquisition, and any amounts paid by the insurer after acquisition on assessments levied for improvements in connection with the property. After the initial valuation as set forth in this section, any land must be valued at its acquisition cost and any improvements on the land must be valued at depreciated acquisition cost.

(2) Other real property held by an insurer may not be valued at an amount in excess of acquisition cost, if land, and depreciated acquisition cost, if an improvement to land.

(3) Personal property acquired pursuant to chattel mortgages may not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, together with taxes and expenses incurred in connection with the acquisition, or the fair value of the property, whichever amount is the lesser.

History: En. Sec. 96, Ch. 286, L. 1959; R.C.M. 1947, 40-3015; amd. Sec. 2, Ch. 534, L. 1987; amd. Sec. 41, Ch. 304, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 304 in (3) after "mortgages" deleted "made in accordance with 33-2-831"; and made minor changes in style. Amendment effective July 1, 1999.

33-2-535. Valuation of purchase money mortgages. Purchase money mortgages on real property referred to in 33-2-534(1) shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or 90% of the fair value of such real property, whichever is less.

History: En. Sec. 97, Ch. 286, L. 1959; R.C.M. 1947, 40-3016.

33-2-536. Repealed. Sec. 44, Ch. 531, L. 1997.

History: En. Sec. 8, Ch. 520, L. 1983.

33-2-537. Reserve calculation — indeterminate premium plans — minimum standards for disability plans. (1) In the case of a plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of a plan of life insurance or annuity that is of a nature that the minimum reserves cannot be determined by the methods described in 33-2-525 and 33-2-526(3), the reserves that are held under the plan must:

(a) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(b) be computed by a method that is consistent with the principles of 33-2-521 through 33-2-529.

(2) The commissioner may promulgate a rule containing the minimum standards applicable to the valuation of disability plans.

History: En. Sec. 76, Ch. 379, L. 1995; amd. Sec. 7, Ch. 531, L. 1997.

Part 6

Deposits

33-2-601. Authorized deposits of insurers. The following deposits of insurers when made through the commissioner shall be accepted and held and shall be subject to the provisions of this part:

(1) deposits required under this code for authority to transact insurance in this state;

(2) deposits of domestic insurers when made pursuant to the laws of other states, provinces, and countries as requirement for authority to transact insurance in such state, province, or country;

(3) deposits of reserves made by domestic life insurers under 33-2-531;

(4) deposits in such additional amounts as are permitted to be made under 33-2-609.

History: En. Sec. 132, Ch. 286, L. 1959; R.C.M. 1947, 40-3201.

Cross-References

Deposit requirement — general provision, 33-2-111.

33-2-602. Purpose of deposit. Such deposits shall be held for purposes as follows:

(1) Deposits made in this state under 33-2-111 shall be held for the purpose stated in such section.

(2) A deposit made in this state by a domestic insurer transacting insurance in another state, province, or country and as required by the laws of such other state, province, or country shall be held for the protection of all the insurer's policyholders or all its policyholders and creditors or for such other purpose or purposes as may be specified pursuant to such laws.

(3) Deposits of reserves made by domestic life insurers under 33-2-531 shall be held for the common benefit of all the holders of its life insurance policies and annuity contracts.

(4) Deposits required pursuant to the retaliatory law, 33-2-709, shall be held for such purposes as is required by such law and as specified by the commissioner's order requiring such deposit to be made.

History: En. Sec. 133, Ch. 286, L. 1959; R.C.M. 1947, 40-3202.

Cross-References

Alien insurers — deposit of trusteed assets, 33-2-202.

33-2-603. Securities eligible for deposit. (1) All deposits required under 33-2-111 for authority to transact insurance in this state must consist of certificates of deposit or the following securities:

(a) United States or Canadian government bonds, notes, warrants, or other evidences of indebtedness that are direct obligations of the United States or of Canada or for which the full faith and credit of the United States or of Canada is pledged for the payment of principal and interest;

(b) state, county, municipal, and school bonds or other evidences of indebtedness that are general obligations of or are secured by a pledge of specific revenue of a state or of a province of Canada or of any of the counties, incorporated cities or towns, school districts, or other taxing districts in a state or province; and

(c) revenue bonds, notes, or other evidences of indebtedness of any state or province, political subdivision of a state or province or agency or instrumentality of a state or province that are payable from revenue or earnings specifically pledged for the payment of the principal and interest on the obligations and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained.

(2) All other deposits of a domestic insurer held in this state pursuant to the laws of another state, province, or country must be comprised of assets of the kinds described in subsection (1) and of additional kind or kinds of securities required or permitted by the laws of the state, province, or country except common stocks, mortgages of any kind, and real estate.

(3) Deposits of the reserves of a domestic life insurer must consist of securities and assets as provided under 33-2-531.

(4) Deposits of foreign insurers made in this state under the retaliatory law, 33-2-709, must consist of assets that are required by the commissioner pursuant to 33-2-709.

History: En. Sec. 134, Ch. 286, L. 1959; R.C.M. 1947, 40-3203; amd. Sec. 42, Ch. 304, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 304 at end of (1) substituted "following securities" for "any combination of securities of the kinds described in the following sections of this code: 33-2-811(1), 33-2-812, and 33-2-813"; inserted

(1)(a) through (1)(c) listing types of eligible securities; and made minor changes in style. Amendment effective July 1, 1999.

33-2-604. Depositary or custodian. (1) Deposits made in this state under this code shall be made through the office of the commissioner in safe deposit or under custodial arrangements as required or approved by the commissioner consistent with the purposes of such deposit, with an established safe deposit institution, bank, or trust company located in the city of Helena, state of Montana, selected by the insurer with the commissioner's approval.

(2) No safe deposit shall be used for any such deposit unless the box or compartment in which are kept the assets and securities comprising the deposit requires two separate and distinctly differing keys or one key and a combination, in the case of a box having a combination lock, to open the same. One of such keys or the combination shall at all times be kept by the commissioner, and the other key or the combination shall at all times be kept by the insurer. Such box or compartment shall not at any time be opened or remain open except through the joint action and in the presence of both the commissioner and a duly authorized officer or representative of the insurer.

(3) Where of convenience to the insurer in the buying, selling, and exchange of securities comprising its deposit and in the collection of interest and other income currently accruing thereon, the insurer may, with the commissioner's written approval in advance, deposit certain of such securities under custodial arrangements with an established bank or trust company located outside this state, so long as receipts representing all such securities are issued by such custodian bank or trust company and are held in safe deposit or custody subject to the requirements of subsections (1) and (2) of this section.

(4) The form and terms of all such depositary or custodial agreements shall be as prescribed or approved by the commissioner, consistent with the applicable provisions of this code.

(5) The compensation and expenses of the depositary or custodian shall be borne by the insurer.

History: **En. Sec. 135, Ch. 286, L. 1959; R.C.M. 1947, 40-3204.**

Cross-References

Commercial bank defined, 32-1-105.
Savings bank defined, 32-1-106.
Trust company defined, 32-1-107.
Investment company defined, 32-1-108.

33-2-605. Record of deposits — liability of commissioner and state. (1) The commissioner shall give to the depositing insurer vouchers as to all assets and securities deposited by it in this state through the commissioner as provided in this code.

(2) The commissioner shall keep a record of the assets and securities comprising each deposit, showing as far as practical the amount and market value of each item, and all his transactions relative thereto.

(3) The commissioner and the state of Montana shall have no liability as to the safekeeping of any such deposit by the depositary or custodian thereof.

History: **(1), (2)En. Sec. 136, Ch. 286, L. 1959; Sec. 40-3205, R.C.M. 1947; (3)En. Sec. 137, Ch. 286, L. 1959; Sec. 40-3206, R.C.M. 1947; R.C.M. 1947, 40-3205, 40-3206.**

33-2-606. Assignment or conveyance of assets or securities. All securities not negotiable by delivery and deposited under this code shall be duly assigned to the commissioner and his successors in office. In the case of securities held under custodial arrangements outside this state pursuant to 33-2-604(3), the custodian's receipt for such securities shall be so delivered, if negotiable, or assigned to the commissioner if thereby legal title to such securities is vested in the commissioner. The insurer shall transfer or convey to the commissioner and his successors in office all other assets so deposited. Upon release to the insurer of any such asset or security, the commissioner shall reassign or transfer or reconvey the same to the insurer.

History: En. Sec. 138, Ch. 286, L. 1959; R.C.M. 1947, 40-3207.

Cross-References

Security in real property — domestic life insurers — transferability requirements, 33-2-531.

33-2-607. Appraisal. The commissioner may, in his discretion, prior to acceptance for deposit of any particular asset or security or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable costs of any such appraisal or valuation shall be borne by the insurer.

History: En. Sec. 139, Ch. 286, L. 1959; R.C.M. 1947, 40-3208.

Cross-References

Domestic life insurers — reserves valuation, 33-2-532 through 33-2-535.

33-2-608. Rights of insurer during solvency. So long as the insurer remains solvent and is in compliance with this code it may:

(1) demand, receive, sue for, and recover the income from the assets or securities deposited;

(2) exchange and substitute for the deposited assets or securities, or any part thereof, other eligible assets or securities of equivalent or greater value; and

(3) at any reasonable time inspect any such deposit.

History: En. Sec. 140, Ch. 286, L. 1959; R.C.M. 1947, 40-3209.

Cross-References

Insolvency — supervision by Commissioner, 33-2-1321.

33-2-609. Excess deposits. An insurer may so deposit and have on deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under this code by not more than 20% of such required or permitted deposit or $50,000, whichever is the larger amount, for the purpose of absorbing fluctuations in the value of assets and securities deposited and to facilitate the exchange and substitution of such assets and securities. During the solvency of the insurer any such excess shall be released to the insurer upon its request. During the insolvency of the insurer such excess deposit shall be released only as provided in 33-2-612(4).

History: En. Sec. 141, Ch. 286, L. 1959; R.C.M. 1947, 40-3210.

33-2-610. Levy upon deposit. No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. As to deposits pursuant to the retaliatory law, 33-2-709, levy thereupon shall be permitted if so provided in the commissioner's order under which the deposit is made.

History: En. Sec. 142, Ch. 286, L. 1959; R.C.M. 1947, 40-3211.

33-2-611. Deficiency of deposit — revocation of certificate. If for any reason the market value of assets and securities of an insurer held on deposit in this state or in another state under custodial arrangements authorized by 33-2-604(3) falls below the amount required under this code to be so held, the insurer shall promptly deposit other or additional assets or securities eligible for deposit under this part and in amount sufficient to cure such deficiency. If the insurer has failed to cure the deficiency within 20 days after receipt of notice thereof by registered or certified mail from the commissioner, the commissioner shall forthwith revoke the insurer's certificate of authority.

History: **En. Sec. 143, Ch. 286, L. 1959; R.C.M. 1947, 40-3212.**

Cross-References

Revocation of certificate of authority, 33-2-118.

33-2-612. Duration and release of deposit. (1) Every deposit made in this state by an insurer pursuant to this code, including assets and securities held in another state under custodial arrangements permitted by 33-2-604(3), shall be held as long as there is outstanding any liability of the insurer as to which the deposit was so required, or if a deposit required under the retaliatory law, 33-2-709, the deposit shall be held for so long as the basis of such retaliation exists.

(2) Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the assets and securities so to be returned are subject to no liability and are not required to be longer held by any provision of law or purposes of the original deposit. If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this state, then the commissioner shall deliver such assets and securities to such insurer or insurers so assuming such risks, upon:

(a) written notice to him by such domestic insurer that such assets and securities have been duly assigned, transferred, and set over to such reinsuring insurer or insurers, which notice shall be accompanied by a duly verified copy of such assignment, transfer, or conveyance; and

(b) in the case of deposits of the reserves of domestic life insurers under 33-2-531, proof satisfactory to the commissioner that the reinsuring insurer or insurers have deposited or will deposit and will maintain on deposit in public custody through the insurance supervisory official of its state of domicile assets and securities of like quality in amount not less than the reserves then and thereafter of the policies and contracts so reinsured, in addition to any other deposit of such insurer required or permitted by law, and, unless the insurer is required so to deposit and maintain on deposit all of its reserves, that such deposit of such reserves will be so deposited and held on deposit for the special benefit and protection of the holders of the life insurance policies and annuity contracts so reinsured.

(3) The commissioner shall return to a foreign insurer any deposit made in this state by such insurer when such insurer has ceased transacting insurance in this state or in the United States and the insurer is not subject to any liability in this state on account of which the deposit was held.

(4) If the insurer is subject to delinquency proceedings, as defined in part 13 of this chapter, upon the order of a court of competent jurisdiction, the commissioner shall yield the assets and securities held on deposit to the receiver, conservator, rehabilitator, or liquidator of the insurer or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

(5) No release of deposited assets shall be made except upon application to and the written order of the commissioner. The commissioner shall have no personal liability for any release of any such deposit or part thereof so made by him in good faith.

History: **En. Sec. 144, Ch. 286, L. 1959; R.C.M. 1947, 40-3213; amd. Sec. 141, Ch. 575, L. 1981.**

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.; 2-9-102.

Immunization and indemnification of public officers, 2-9-305.

Part 7

Reports, Fees, and Taxes

Part Cross-References

Report of surplus line insurance producer, 33-2-310.

33-2-701. Annual statement — revocation or fine for failure to file — penalty for perjury. (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves. The statement must be verified by the oath of the insurer's president or vice president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may waive the verification under oath.

(2) (a) Each domestic insurer shall file electronic versions of its annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement electronic filing is March 1. The dates for the submission of the quarterly statement electronic filings are as follows:

(i) the first quarter filing is due May 15;

(ii) the second quarter filing is due August 15; and

(iii) the third quarter filing is due November 15.

(b) The commissioner may exempt insurers that operate only in Montana from these filing requirements.

(3) The statement of an alien insurer must relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible. The statement must be verified by the insurer's United States manager or other authorized officer.

(4) The commissioner may refuse to accept the fee for renewal of the insurer's certificate of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or within an extension of time that the commissioner may grant.

(5) A director, officer, insurance producer, or employee of a company who subscribes to, makes, or concurs in making or publishing an annual statement or any other statement required by law knowing that the statement contains any material statement that is false shall be punished by a fine of not more than $1,000.

(6) The commissioner may impose a fine not to exceed $100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed a maximum of $1,000.

History: En. Sec. 65, Ch. 286, L. 1959; amd. Sec. 1, Ch. 27, L. 1967; R.C.M. 1947, 40-2820; amd. Sec. 3, Ch. 534, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 43, Ch. 596, L. 1993; amd. Sec. 20, Ch. 379, L. 1995; amd. Sec. 3, Ch. 316, L. 1999; amd. Sec. 15, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 316 in (4) near beginning after "fee for" substituted "renewal" for "continuance"; deleted former (6) that read: "(6) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 472 in (2)(a) in first sentence after "electronic" deleted "diskette", at beginning of second sentence after "The" deleted "filing" and after "statement" substituted "electronic filing" for "diskette", and at beginning of third sentence after "The" deleted "filing", before "quarterly" inserted "submission of the", and after "statement" substituted "electronic filings" for "diskettes"; in (2)(a)(i) after "first" deleted "calendar"; in (2)(a)(ii) after "second" deleted "calendar"; in (2)(a)(iii) after "third" deleted "calendar"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

Benevolent associations — additional requirements, 33-6-304.

False swearing, 45-7-202.

33-2-702 and 33-2-703 reserved.

33-2-704. Insured lives reporting requirement. On or before March 1 of each year, each insurer providing disability insurance shall, on a form prescribed by the commissioner, report the number of Montana residents insured on February 1 under any policy of individual or group disability insurance, including excess of loss or stop loss insurance policies covering disability insurance.

History: En. Sec. 11, Ch. 377, L. 1995; amd. Sec. 8, Ch. 531, L. 1997.

33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the commissioner a tax upon the net premiums computed at the rate of 2 ¾%.

(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report as required by the commissioner, for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the

entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued.

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971; R.C.M. 1947, 40-2821(part); amd. Sec. 1, Ch. 664, L. 1979; amd. Sec. 7, Ch. 303, L. 1981; amd. Sec. 12, Ch. 467, L. 1981; amd. Sec. 1, Ch. 295, L. 1983; amd. Sec. 3, Ch. 518, L. 1983; amd. Sec. 3, Ch. 622, L. 1987; amd. Sec. 2, Ch. 798, L. 1991; amd. Sec. 30, Ch. 15, Sp. L. July 1992; amd. Sec. 8, Ch. 451, L. 1993; amd. Sec. 21, Ch. 379, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Not subject to corporate license tax, 15-31-101.

General fund — deposits by Insurance Commissioner, 17-2-121.

Allocation of certain casualty insurance tax — firefighters' pension and compensation, 19-13-604, 19-17-301, 19-18-512.

Fire departments — reports to Commissioner, 19-18-511.

Allocation of certain casualty insurance tax — municipal police officers' retirement system, 19-19-305.

Revocation of certificate of authority, 33-2-118, 33-2-119.

Tax on surplus lines, 33-2-311.

Not applicable to health service corporations, 33-30-203.

Tax on fire insurance premiums — state fire prevention and investigation program, 50-3-109.

33-2-706. Report and tax of independently procured coverages. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer or any self-insurer who in this state so procures or continues excess loss, catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than insurance procured through a surplus lines insurance producer pursuant to The Surplus Lines Insurance Law or exempted from such law under 33-2-317, shall, within 30 days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner. If any such insurance covers also a subject of insurance resident, located, or to be performed outside this state, a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located, or to be performed in this state, for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state or for which premiums in whole or in part are remitted directly or indirectly from within this state shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) above.

(3) For the general support of the government of this state there is levied upon the obligation, chose in action, or right represented by the premium charged or payable for such insurance a tax at the rate of 2 3⁄4% of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within 30 days after the insurance was so procured, continued, or renewed and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the state treasurer through the commissioner.

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in subsection (3) above.

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of 6% per annum, compounded annually.

(6) The tax shall be collectible from the insured by civil action brought by the commissioner.

(7) This section does not abrogate or modify and shall not be construed or deemed to abrogate or modify any provision of 33-2-104 or 33-2-105 or any other provision of this code.

(8) This section does not apply as to life or disability insurances.

History: En. Sec. 202, Ch. 286, L. 1959; amd. Sec. 1, Ch. 147, L. 1977; R.C.M. 1947, 40-3427; amd. Sec. 26, Ch. 537, L. 1987; amd. Sec. 2, Ch. 713, L. 1989.

Cross-References

General fund — deposits by Insurance Commissioner, 17-2-121.

33-2-707. Preemption of taxing. The state of Montana hereby preempts the field of imposing excise, privilege, franchise, income, license, and similar taxes, licenses, and fees upon insurers and their general insurance producers and insurance producers as such and on the intangible property of insurers or such insurance producers. No county, city, municipality, district, school district, or other political subdivision or agency in Montana shall levy upon insurers, or upon their general insurance producers and insurance producers as such, any such tax, license, or fee additional to such as are levied by the legislature of Montana in this code.

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971; R.C.M. 1947, 40-2821(6); amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

No payment of corporate tax, 15-31-101.

33-2-708. Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:	
(A) application for original license, including issuance of license, if issued	100.00
(B) annual renewal of license	10.00
(ii) surplus lines insurance producer license:	

(A) application for original license and for issuance of license, if issued 50.00

(B) annual renewal of license 50.00

(iii) 50 cents for each page for copies of documents on file in the commissioner's office.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded.

History: En. Sec. 45, Ch. 286, L. 1959; amd. Sec. 1, Ch. 32, L. 1969; amd. Sec. 1, Ch. 334, L. 1973; amd. Sec. 1, Ch. 444, L. 1975; amd. Sec. 1, Ch. 322, L. 1977; R.C.M. 1947, 40-2726(1), (2); amd. Sec. 10, Ch. 198, L. 1979; amd. Sec. 1, Ch. 344, L. 1979; amd. Sec. 8, Ch. 303, L. 1981; amd. Sec. 1, Ch. 391, L. 1985; amd. Sec. 15, Ch. 249, L. 1987; amd. Sec. 1, Ch. 469, L. 1987; amd. Sec. 27, Ch. 537, L. 1987; amd. Sec. 6, Ch. 351, L. 1989; amd. Sec. 5, Ch. 509, L. 1989; amd. Sec. 14, Ch. 713, L. 1989; amd. Sec. 3, Ch. 798, L. 1991; amd. Sec. 9, Ch. 451, L. 1993; amd. Sec. 44, Ch. 596, L. 1993; amd. Sec. 7, Ch. 622, L. 1993; amd. Sec. 1, Ch. 6, Sp. L. November 1993; amd. Sec. 1, Ch. 98, L. 1995; amd. Sec. 22, Ch. 379, L. 1995; amd. Sec. 1, Ch. 70, L. 1997; amd. Sec. 4, Ch. 316, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 316 in (1)(a) after "collect" inserted "a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana" for former text that read: "and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation, except original articles of incorporation of domestic insurers as provided in subsection (1)(b), and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers.....$600.00

(B) foreign insurers.....600.00

(ii) annual continuation of certificate of authority.....600.00

(iii) reinstatement of certificate of authority.....25.00

(iv) amendment of certificate of authority.....50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state.....20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation.....25.00

(c) filing bylaws or amendment to bylaws when required.....10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority.....25.00

(e) insurance producer's license:

(i) application for original license, including issuance of license, if issued.....15.00

(ii) appointment of insurance producer, each insurer, electronically filed.....10.00

(iii) appointment of insurance producer, each insurer, nonelectronically filed.....15.00

(iv) temporary license.....15.00

(v) amendment of license, excluding additions to license, or reissuance of master license.....15.00

(vi) termination of insurance producer, each insurer, electronically filed.....10.00

(vii) termination of insurance producer, each insurer, nonelectronically filed.....15.00"; in (1)(b) inserted introductory clause regarding collection of fees; deleted former (1)(f)(ii) and (1)(f)(iii) that read: "(ii) appointment of insurance producer, each insurer, electronically filed.....10.00

(iii) appointment of insurance producer, each insurer, nonelectronically filed.....15.00"; deleted former (1)(f)(v) through (1)(g) that read: "(v) amendment of license, excluding additions to license, or reissuance of master license.....15.00

(vi) termination of insurance producer, each insurer, electronically filed.....10.00

(vii) termination of insurance producer, each insurer, nonelectronically filed.....15.00

(g) examination, if administered by the commissioner, for license as insurance producer, each examination.....15.00"; deleted former (1)(i) through (1)(l) that read: "(i) adjuster's license:

(i) application for original license and for issuance of license, if issued.....15.00

(ii) annual renewal of license.....15.00

(j) insurance vending machine license, each machine, each year.....10.00

(k) motor club representative's license:

(i) application for original license and issuance of license, if issued.....15.00

(ii) annual renewal of license.....15.00

(l) commissioner's certificate under seal, except when on certificates of authority or licenses.....10.00"; at beginning of (1)(b)(iii) inserted ".50 for each page for"; deleted former (1)(n) that read: "(n) policy forms:

(i) filing each policy form.....25.00

(ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks.....10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days, provided that all additional forms relate to the same policy.....100.00"; in (2)(a) near beginning after "commissioner shall" substituted language allowing a charge of $75 for each course and limiting the charge to a sponsoring organization at not more than $1,500 for former text that read: "establish by rule fees commensurate with costs for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205"; inserted (2)(b) exempting insurers and associations from the statutory charge; deleted former (3) that read: "(3) The commissioner shall establish by rule an annual accreditation fee to be paid by each domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority"; in (3) at end of first sentence after "33-2-706" substituted "All other fees" for "and any fees and examination and miscellaneous charges that are" and in the second sentence near middle after "under Title 33" deleted "except that all fees for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205" and at end substituted "to the credit of the state auditor's office" for "pursuant to 33-17-1207"; deleted former (4)(b) that read: "(b) The accreditation fee required by subsection (3) and the annual renewal of license fee established in subsection (1)(f)(iv) must be turned over promptly to the state treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in discharging the administrative and regulatory duties that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money. The commissioner is responsible for the proper expenditure of the accreditation money and the renewal fee"; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date: Section 18, Ch. 316, L. 1999, provided: "[This act] is effective January 1, 2000, with the application and renewal fee in 33-2-708 being due March 1, 2000, for tax year 1999."

Cross-References

Fund structure, Title 17, ch. 2.

General fund — deposits by Insurance Commissioner, 17-2-121.

33-2-709. Retaliatory fees, taxes, and other obligations. (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses, and other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon Montana insurers or upon the insurance producers or representatives of such insurers which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers or upon the insurance producers or representatives of such insurers of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers or upon the insurance producers or representatives of such insurers of such other state or country doing business or seeking to do business in Montana. Any tax, license, or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Montana insurers or their insurance producers or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

(2) This section shall not apply as to any fees in conjunction with the licensing of insurance producers, personal income taxes, ad valorem taxes on real or personal property, or special purpose obligations or assessments imposed by another state or by an agency of this state other than the department in connection with particular kinds of insurance other than property insurance, except that deductions from premium taxes or other taxes otherwise payable allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

(3) (a) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within 6 months after January 1, 1961, whichever date is the later, and may be any one of the following states:

(i) that in which the insurer was first authorized to transact insurance;

(ii) that in which is located the insurer's principal place of business in the United States;

(iii) that in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States.

(b) If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

History: En. Sec. 71, Ch. 286, L. 1959; R.C.M. 1947, 40-2826; amd. Sec. 9, Ch. 303, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 4, Ch. 798, L. 1991.

Cross-References

Holding of retaliatory deposit, 33-2-602, 33-2-603.

Levy on retaliatory deposit by claimant or judgment debtor, 33-2-610.

Release of retaliatory deposit, 33-2-612.

33-2-710. Premium tax imposed on policy issued through nonresident licensee. Any insurer who issues a policy on a subject or risk located or to be performed in Montana through a nonresident licensee shall pay a premium tax on such policy to the state of Montana, in an amount and in the manner provided in 33-2-705.

History: En. Sec. 4, Ch. 395, L. 1983.

Cross-References

Nonresident licensee to pay taxes — annual report required, 33-17-407.

33-2-711. Terminated. Sec. 6, Ch. 706, L. 1985.

History: En. Sec. 2, Ch. 706, L. 1985.

33-2-712. Genetics program fee. Except as provided in 33-2-713, for each Montana resident insured under any individual or group disability or health insurance policy on February 1 of each year, the insurer or health service corporation issuing the policy, and the state group health plan provided for in Title 2, chapter 18, part 8, shall pay 70 cents to the commissioner. The fee must be paid on or before March 1 of each year and be deposited in the general fund. The purpose of the fee is to fund the voluntary statewide genetics program established in 50-19-211.

History: En. Sec. 1, Ch. 554, L. 1987; amd. Sec. 1, Ch. 155, L. 1989; amd. Sec. 1, Ch. 638, L. 1991.

33-2-713. Group disability policy exemption. The fee required in 33-2-712 does not apply to blanket group disability insurance as defined in Title 33, chapter 22, part 6, where the total premium charged per person is less than $10 a year. For these policies, the fee is to be assessed on the basis of the number of blanket group policyholders in Montana.

History: En. Sec. 2, Ch. 554, L. 1987.

33-2-714 through 33-2-720 reserved.

33-2-721. Repealed. Sec. 44, Ch. 531, L. 1997.

History: En. Sec. 1, Ch. 615, L. 1979; amd. Sec. 1, Ch. 60, L. 1983.

33-2-722. Repealed. Sec. 44, Ch. 531, L. 1997.

History: En. Sec. 2, Ch. 615, L. 1979.

33-2-723. Repealed. Sec. 44, Ch. 531, L. 1997.

History: En. Sec. 3, Ch. 615, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

33-2-724 through 33-2-735 reserved.

33-2-736. Terminated. Sec. 39(9), Ch. 15, Sp. L. July 1992.

History: En. Sec. 31, Ch. 15, Sp. L. July 1992.

Part 8

Investments (Repealed)

33-2-801. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 98, Ch. 286, L. 1959; R.C.M. 1947, 40-3101.

33-2-802. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 99, Ch. 286, L. 1959; R.C.M. 1947, 40-3102.

33-2-803. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 100, Ch. 286, L. 1959; R.C.M. 1947, 40-3103; amd. Sec. 23, Ch. 379, L. 1995.

33-2-804. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 130, Ch. 286, L. 1959; R.C.M. 1947, 40-3133.

33-2-805. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 101, Ch. 286, L. 1959; R.C.M. 1947, 40-3104.

33-2-806. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 102, Ch. 286, L. 1959; R.C.M. 1947, 40-3105; amd. Sec. 4, Ch. 534, L. 1987; amd. Sec. 24, Ch. 379, L. 1995; amd. Sec. 9, Ch. 531, L. 1997.

33-2-807 through 33-2-810 reserved.

33-2-811. Repealed. Sec. 50, Ch. 304, L. 1999.

History: (1)En. Sec. 103, Ch. 286, L. 1959; Sec. 40-3106, R.C.M. 1947; (2)En. Sec. 104, Ch. 286, L. 1959; Sec. 40-3107, R.C.M. 1947; R.C.M. 1947, 40-3106, 40-3107.

33-2-812. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 105, Ch. 286, L. 1959; R.C.M. 1947, 40-3108.

33-2-813. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 106, Ch. 286, L. 1959; R.C.M. 1947, 40-3109.

33-2-814. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 107, Ch. 286, L. 1959; R.C.M. 1947, 40-3110.

33-2-815. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 108, Ch. 286, L. 1959; R.C.M. 1947, 40-3111.

33-2-816. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 109, Ch. 286, L. 1959; R.C.M. 1947, 40-3112.

33-2-817. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 110, Ch. 286, L. 1959; R.C.M. 1947, 40-3113; amd. Sec. 1, Ch. 411, L. 1989.

33-2-818. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 111, Ch. 286, L. 1959; R.C.M. 1947, 40-3114.

33-2-819. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 112, Ch. 286, L. 1959; R.C.M. 1947, 40-3115.

33-2-820. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 113, Ch. 286, L. 1959; R.C.M. 1947, 40-3116; amd. Sec. 25, Ch. 379, L. 1995.

33-2-821. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 114, Ch. 286, L. 1959; R.C.M. 1947, 40-3117.

33-2-822. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 115, Ch. 286, L. 1959; R.C.M. 1947, 40-3118; amd. Sec. 3, Ch. 570, L. 1979.

33-2-823. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 116, Ch. 286, L. 1959; R.C.M. 1947, 40-3119.

33-2-824. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 117, Ch. 186, L. 1959; R.C.M. 1947, 40-3120.

33-2-825. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 118, Ch. 286, L. 1959; R.C.M. 1947, 40-3121.

33-2-826. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 119, Ch. 286, L. 1959; R.C.M. 1947, 40-3122.

33-2-827. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 120, Ch. 286, L. 1959; R.C.M. 1947, 40-3123; amd. Sec. 55, Ch. 10, L. 1993.

33-2-828. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 121, Ch. 286, L. 1959; R.C.M. 1947, 40-3124.

33-2-829. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 122, Ch. 286, L. 1959; R.C.M. 1947, 40-3125; amd. Sec. 1, Ch. 713, L. 1989.

33-2-830. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 123, Ch. 286, L. 1959; amd. Sec. 1, Ch. 20, L. 1961; R.C.M. 1947, 40-3126; amd. Sec. 4, Ch. 570, L. 1979; amd. Sec. 143, Ch. 42, L. 1997; amd. Sec. 1, Ch. 94, L. 1997.

33-2-831. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 124, Ch. 286, L. 1959; R.C.M. 1947, 40-3127.

33-2-832. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 125, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1961; R.C.M. 1947, 40-3128; amd. Sec. 5, Ch. 570, L. 1979.

33-2-833. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; R.C.M. 1947, 35-142(part); amd. Sec. 11, Ch. 198, L. 1979.

33-2-834 through 33-2-840 reserved.

33-2-841. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 126, Ch. 286, L. 1959; R.C.M. 1947, 40-3129.

33-2-842. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 127, Ch. 286, L. 1959; R.C.M. 1947, 40-3130.

33-2-843. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 128, Ch. 286, L. 1959; R.C.M. 1947, 40-3131.

33-2-844 through 33-2-850 reserved.

33-2-851. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 129, Ch. 286, L. 1959; R.C.M. 1947, 40-3132; amd. Sec. 17, Ch. 519, L. 1985; amd. Sec. 3, Ch. 713, L. 1989.

33-2-852. Repealed. Sec. 50, Ch. 304, L. 1999.

History: En. Sec. 131, Ch. 286, L. 1959; R.C.M. 1947, 40-3134.

Part 9

Rehabilitation and Liquidation (Repealed. Sec. 61, Ch. 383, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

33-2-901 through 33-2-947. En. Sec. 566 thru 596, Ch. 286, L. 1959; R.C.M. 1947, 40-5101 thru 40-5133.

33-2-948. En. 40-5134 by Sec. 2, Ch. 200, L. 1977; R.C.M. 1947, 40-5134.

Part 10

Stock Transfers — Holding Companies (Repealed. Sec. 1, Ch. 239, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

33-2-1001 through 33-2-1007. En. Sec. 2 through 8, Ch. 269, L. 1967; R.C.M. 1947, 40-5502(part), 40-5503 thru 40-5508.

Part 11

Affiliation and Merger — Holding Company Systems

33-2-1101. Definitions. As used in this part, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(1) An "affiliate" of or person "affiliated" with a specific person is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

(2) The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by 33-2-1112 that control does not exist

in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(4) The term "insurer" shall have the same meaning as set forth in 33-1-201, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(5) A "person" is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert but shall not include any securities broker performing no more than the usual and customary broker's function.

(6) A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(7) A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(8) The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

History: En. Sec. 1, Ch. 64, L. 1971; R.C.M. 1947, 40-5509(part).

33-2-1102. Authorization of subsidiaries. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(2) acting as an insurance broker or as an insurance producer for its parent or for any of its parent's insurer subsidiaries;

(3) investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(4) management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

(5) acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(6) rendering investment advice to governments, government agencies, corporations, or other organizations or groups;

(7) rendering other services related to the operations of an insurance business, including but not limited to actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;

(8) ownership and management of assets which the parent corporation could itself own or manage;

(9) acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) financing of insurance premiums, insurance producers, and other forms of consumer financing;

(11) any other business activity determined by the commissioner to be reasonable ancillary to an insurance business;

(12) owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

History: En. Sec. 2, Ch. 64, L. 1971; R.C.M. 1947, 40-5510(a); amd. Sec. 1, Ch. 713, L. 1989.

33-2-1103. Additional investment authority — exemption from other investment restrictions — determination of qualification — divestiture. (1) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this part, a domestic insurer may also:

(a) invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of 10% of the insurer's assets or 50% of the insurer's surplus as regards policyholders, provided that after the investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, there must be included total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

(b) if the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than 10% of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that after the investment the insurer's surplus as regards policyholders, considering the investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(c) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this section. The total investment of the insurer must include:

(i) any direct investment by the insurer in an asset;

(ii) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which is calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(d) with the approval of the commissioner, invest a greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after the investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (1) are not subject to any of the otherwise applicable restrictions or prohibitions contained in this part applicable to such investments of insurers.

(3) Whether any investment pursuant to subsection (1) meets the applicable requirements thereof is to be determined immediately after the investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.

(4) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the commissioner may

prescribe, unless at any time after the investment is made, the investment meets the requirements for investment under any other section of this part and the insurer has notified the commissioner thereof.

History: En. Sec. 2, Ch. 64, L. 1971; R.C.M. 1947, 40-5510(b) thru (e); amd. Sec. 12, Ch. 198, L. 1979; amd. Sec. 142, Ch. 575, L. 1981; amd. Sec. 2, Ch. 620, L. 1989.

33-2-1104. Acquisition of control of or merger with domestic insurer — filing requisites. (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed. For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(2) The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(a) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) is to be effected (hereinafter called "acquiring party"):

(i) if such person is an individual, his principal occupation and all offices and positions held during the past 5 years and any conviction of crimes other than minor traffic violations during the past 10 years;

(ii) if such person is not an individual, a report of the nature of its business operations during the past 5 years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subsection (2)(a)(i).

(b) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(c) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence) and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(d) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) the number of shares of any security referred to in subsection (1) which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) and a statement as to the method by which the fairness of the proposal was arrived at;

(f) the amount of each class of any security referred to in subsection (1) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) a full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(h) a description of the purchase of any security referred to in subsection (1) during the 12 calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(i) a description of any recommendations to purchase any security referred to in subsection (1) made during the 12 calendar months preceding the filing of the statement, by any acquiring party or by anyone based upon interviews or at the suggestion of such acquiring party;

(j) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) and (if distributed) of additional soliciting material relating thereto;

(k) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (1) for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(l) such additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

(3) If the person required to file the statement referred to in subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subsection (2) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (1) is a corporation, the commissioner may require that the information called for by subsection (2) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within 2 business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(5) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) may utilize such documents in furnishing the information called for by that statement.

History: En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(a) thru (c).

Cross-References

Promulgation of rules, Title 2, ch. 4, part 3; 33-1-313.

Securities Act of Montana, Title 30, ch. 10.

33-2-1105. Approval by commissioner — hearings — notice. (1) The commissioner shall approve any merger or other acquisition of control referred to in 33-2-1104(1) unless, after a public hearing thereon, he finds that:

(a) after the change of control the domestic insurer referred to in 33-2-1104(1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) the financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in 33-2-1104(1) are unfair and unreasonable to the securityholders of the insurer;

(e) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in subsection (1) must be held within 30 days after the statement required by 33-2-1104(1) is filed, and at least 20 days notice thereof must be given by the commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person filing the statement to the insurer and to other persons as may be designated by the commissioner. The insurer shall give notice to its securityholders. The commissioner shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby has the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith is entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings must be concluded not later than 3 days prior to the commencement of the public hearing.

(3) All statements, amendments, or other material filed pursuant to subsections (1) through (4) of 33-2-1104 and all notices of public hearings held pursuant to subsection (1) must be mailed by the insurer to its shareholders within 5 business days after the insurer has received the statements, amendments, other

material, or notices. The expenses of mailing must be borne by the person making the filing. As security for the payment of the expenses, the person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(4) The commissioner may retain at the acquiring party's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

History: **En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(d), (e); amd. Sec. 3, Ch. 620, L. 1989.**

Cross-References

Administrative hearings, Title 2, ch. 4, part 6.

Discovery — District Court proceedings, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

33-2-1106. Exemptions — violations — jurisdiction. (1) The provisions of 33-2-1104, 33-2-1105, and this section do not apply to an offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:

(a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(b) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.

(2) The following are violations of 33-2-1104, 33-2-1105, and this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to subsections (1) through (4) of 33-2-1104;

(b) the effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer unless the commissioner has given his approval thereto.

(3) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving the person arising out of violations of 33-2-1104, 33-2-1105, and this section, and each such person is considered to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process must be served on the commissioner and transmitted by certified mail by the commissioner to the person at his last-known address.

History: **En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(f) thru (h); amd. Sec. 4, Ch. 620, L. 1989.**

Cross-References

Service of process — Commissioner as attorney for service, Title 33, ch. 1, part 6.

33-2-1107 through 33-2-1110 reserved.

33-2-1111. Registration of insurers — requisites — termination. (1) An insurer authorized to do business in this state that is a member of an insurance holding company system shall register with the commissioner, except that a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section is not required to register. Any insurer subject to registration under this section shall register within 15 days after becoming subject to registration, unless the commissioner for good cause extends the time for registration. The commissioner may require any authorized insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority in the jurisdiction where the company is domiciled.

(2) An insurer subject to registration shall file with the commissioner, on or before April 30 each year, a registration statement on a form provided by the commissioner that must contain current information about:

(a) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) the identity of every member of the insurance holding company system;

(c) existing relationships, transactions currently outstanding between the insurer and its affiliates, and the following agreements that are in force:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guaranties or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) management and service contracts and cost-sharing arrangements;

(vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(vii) dividends and other distributions to shareholders; and

(viii) consolidated tax allocation agreements;

(d) a pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan made to a member of the insurance holding company system;

(e) all matters concerning transactions between registered insurers and any affiliates as may be included from time to time in registration forms adopted or approved by the commissioner.

(3) A registration statement must contain a summary outlining each item in the current registration statement that represents a change from the prior registration statement.

(4) Information need not be disclosed on the registration statement filed pursuant to subsection (2) if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving 1/2 of 1% or less of an insurer's admitted assets as of the prior December 31 are not material for purposes of this section.

(5) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with Title 33, chapter 2, part 11.

(6) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each change or addition.

(7) The commissioner shall terminate the registration of any insurer that demonstrates that it no longer is a member of an insurance holding company system.

(8) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(9) The commissioner may allow an insurer that is authorized to do business in this state and that is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section.

History: En. Sec. 4, Ch. 64, L. 1971; R.C.M. 1947, 40-5512(a) thru (g); amd. Sec. 5, Ch. 620, L. 1989; amd. Sec. 45, Ch. 596, L. 1993; amd. Sec. 26, Ch. 379, L. 1995.

33-2-1112. Exemptions — disclaimer — violations. (1) The provisions of 33-2-1111 and this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of 33-2-1111 and this section.

(2) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under 33-2-1111 and this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(3) The failure to file a registration statement or any amendment thereto required by 33-2-1111 and this section within the time specified for such filing shall be a violation of 33-2-1111 and this section.

History: En. Sec. 4, Ch. 64, L. 1971; R.C.M. 1947, 40-5512(h) thru (j).

Cross-References

Promulgation of rules, Title 2, ch. 4, part 3; 33-1-313.

33-2-1113. Transactions with affiliates — standards. (1) Material transactions by registered insurers with their affiliates are subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payments received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions, including any accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) (a) The following transactions involving a domestic insurer and a person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into a transaction and the commissioner has not disapproved it within at least 30 days prior to the transaction, or a shorter period as the commissioner may permit:

(i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the prior December 31, the transactions are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders; and

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in an affiliate of the insurer making the loans or extensions of credit if the transactions, as of the prior December 31, are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(iii) reinsurance agreements or modifications to reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;

(iv) all management agreements, service contracts, and cost-sharing arrangements; and

(v) any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of an insurer that is not a member of the same holding company system, would otherwise be contrary to law.

(3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions with a person within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount review. If the commissioner determines that the separate transactions were entered into over a 12-month period for the purpose of evading review, the commissioner may exercise authority under 33-2-1120.

(4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the transaction complies with the standards set forth in subsection (1) and whether it may adversely affect the interests of a policyholder.

(5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

(6) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, must be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in subsidiaries made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.

History: En. Sec. 5, Ch. 64, L. 1971; R.C.M. 1947, 40-5513(a), (b); amd. Sec. 6, Ch. 620, L. 1989; amd. Sec. 10, Ch. 451, L. 1993.

33-2-1114. Dividends and other distributions — commissioner approval. (1) An insurer subject to registration under 33-2-1111 and 33-2-1112 may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration of the dividend or distribution and has not within the period disapproved the payment or the commissioner has approved payment within the 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds 10% of the insurer's surplus as regards policyholders as of December 31 next preceding, but may not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration may not confer rights upon shareholders until the commissioner has approved the payment of the dividend or distribution or the commissioner has not disapproved the payment within the 30-day period referred to in subsection (1).

(4) An insurer subject to subsection (1) may not pay any other dividend or make any other distribution to its shareholders unless the insurer has notified the commissioner of the payment 15 days prior to the payment date. The notice must be kept confidential until the payment date of the dividend. The commissioner may order that a dividend not be paid if the commissioner finds that the insurer's surplus as regards policyholders, following the payment to shareholders, would be inadequate or could lead the insurer to a hazardous financial condition.

History: En. Sec. 5, Ch. 64, L. 1971; R.C.M. 1947, 40-5513(c); amd. Sec. 5, Ch. 534, L. 1987; amd. Sec. 46, Ch. 596, L. 1993.

33-2-1115. Examination. (1) In addition to the powers which the commissioner has under chapter 1, part 4, relating to the examination of insurers, the commissioner also has the power to order any insurer registered under 33-2-1111 to produce the records, books, or other information papers in the possession of the insurer or its affiliates as are necessary to ascertain the financial condition or legality of conduct of the insurer. If the insurer fails to comply with the order, the commissioner may examine the affiliates to obtain the information.

(2) The commissioner may retain at the registered insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) is liable for and shall pay the expense of the examination.

History: En. Sec. 6, Ch. 64, L. 1971; R.C.M. 1947, 40-5514; amd. Sec. 47, Ch. 596, L. 1993.

33-2-1116. Confidentiality of information. All confidential criminal justice information, as defined in 44-5-103, personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1111 and 33-2-1112 containing confidential criminal justice information, trade secrets, or personal information must be given confidential treatment, may not be subject to subpoena, and may not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication of the trade secrets or personal information, in which event the commissioner may publish all or any part of the trade secrets or personal information in a manner that the commissioner considers appropriate.

History: En. Sec. 7, Ch. 64, L. 1971; R.C.M. 1947, 40-5515; amd. Sec. 7, Ch. 416, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 416 in first sentence after "All" substituted language regarding confidential criminal justice information, personal information, and trade secrets specifically identified and for which reasonable privilege grounds asserted for former language that read: "information, documents, and copies thereof" and after "33-2-1112" inserted "containing confidential criminal justice information, trade secrets, or personal information"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Records open to public inspection, Art. II, sec. 9, Mont. Const.; 2-6-104.

33-2-1117. Rules. The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules and orders as shall be necessary to carry out the provisions of this part.

History: En. Sec. 8, Ch. 64, L. 1971; R.C.M. 1947, 40-5516.

Cross-References

Promulgation of rules, Title 2, ch. 4, part 3; 33-1-313.

33-2-1118. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee, or insurance producer thereof has committed or is about to commit a violation of this part or of any rule or order issued by the commissioner hereunder, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Lewis and Clark County for an order enjoining such insurer or such director, officer, employee, or insurance producer thereof from violating or continuing to violate this part or any such rule or order and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

History: En. Sec. 9, Ch. 64, L. 1971; R.C.M. 1947, 40-5517(a); amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

33-2-1119. Voting of securities — prohibition — injunction — sequestration. (1) No security which is the subject of any agreement or arrangement regarding acquisition or which is acquired or to be acquired in contravention of the provisions of this part or of any rule or order issued by the commissioner hereunder may be voted at any shareholders' meeting or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the insurer or unless the courts of this state have so ordered.

(2) If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this part or of any rule or order issued by the commissioner hereunder, the insurer or the commissioner may apply to the district court for Lewis and Clark County or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of 33-2-1113 or any rule or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(3) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this part or any rule or order issued by the commissioner hereunder, the district court for Lewis and Clark County or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this part. Notwithstanding any other provisions of law, for the purposes of this part the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

History: En. Sec. 9, Ch. 64, L. 1971; R.C.M. 1947, 40-5517(b), (c).

Cross-References

Injunctions, Title 27, ch. 19.

33-2-1120. Criminal or civil proceedings — penalties. (1) An insurer failing without just cause to file a registration statement as required in 33-2-1111 shall, after notice and hearing, pay a penalty of $100 for each day of delinquency. The maximum penalty under this subsection is $25,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) A director or an officer of an insurance holding company system who knowingly violates, participates in, or assents to a transaction or who knowingly permits an officer or insurance producer of the insurer to engage in a transaction or make an investment that has not been properly reported or submitted pursuant to 33-2-1111 or 33-2-1113 or that violates any other provision of Title 33, chapter 2, part 11, shall, after notice and hearing, pay, in his individual capacity, a fine of not more than $5,000 for each violation. To determine the amount of the fine, the commissioner shall consider the appropriateness of the fine with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) If the commissioner determines that an insurer subject to Title 33, chapter 2, part 11, or a director, officer, employee, or insurance producer of the insurer has engaged in a transaction or entered into a contract that is subject to 33-2-1113 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also

order the insurer to void the contract and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.

(4) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or insurance producer thereof has committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark County against such insurer or the responsible director, officer, employee, or insurance producer thereof.

(5) Any insurer which willfully violates this part may be fined not more than $25,000.

(6) Any individual who willfully violates this part may be fined not more than $5,000 or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than 2 years or both.

History: En. Sec. 10, Ch. 64, L. 1971; R.C.M. 1947, 40-5518; amd. Sec. 7, Ch. 620, L. 1989; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Criminal Procedure, Title 46.

33-2-1121. Receivership. Whenever it appears to the commissioner that any person has committed a violation of this part which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed to take possession of the property of such domestic insurer and to conduct the business thereof.

History: En. Sec. 11, Ch. 64, L. 1971; R.C.M. 1947, 40-5519.

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-2-1122. Revocation, suspension, or nonrenewal of insurer's license. Whenever it appears to the commissioner that any person has committed a violation of this part which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

History: En. Sec. 12, Ch. 64, L. 1971; R.C.M. 1947, 40-5520.

Cross-References

Contested administrative cases, 2-4-102; Title 2, ch. 4, part 6.

Licenses — withdrawal or revocation, 2-4-631.

33-2-1123. Judicial review — mandamus. (1) Any person aggrieved by any act, determination, rule, or order or any other action of the commissioner pursuant to this part may appeal therefrom to the district court for Lewis and Clark County. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(2) The filing of an appeal pursuant to this section shall stay the application of any such rule, order, or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors, or the public.

(3) Any person aggrieved by any failure of the commissioner to act or make a determination required by this part may petition the district court for Lewis and Clark County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

History: **En. Sec. 13, Ch. 64, L. 1971; R.C.M. 1947, 40-5521.**

Cross-References

Mandamus, Title 27, ch. 26.

Appeals from Commissioner's decision, 33-1-711.

33-2-1124. Conflict with other laws. All laws and parts of laws of this state inconsistent with this part are hereby superseded with respect to matters covered by this part.

History: **En. Sec. 14, Ch. 64, L. 1971; R.C.M. 1947, 40-5522.**

33-2-1125. Recovery of dividends. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer:

(a) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or

(b) any payment in the form of a bonus, termination settlement, or extraordinary lump-sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to subsection (1)(a) or this subsection is made at any time during the year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2) through (4).

(2) A distribution is not recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time that the distributions were paid is liable up to the amount of distributions or payments that the person received. Any person who otherwise controlled the insurer at the time that the distributions were declared is liable up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under subsection (3) is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid is jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

History: **En. Sec. 48, Ch. 596, L. 1993.**

Part 12

Limit of Risk — Reinsurance

33-2-1201. Limit of risk. (1) An insurer may not retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding 10% of its surplus to policyholders.

(2) A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophe hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of the other hazard insured against.

(3) Reinsurance ceded as authorized by this part must be deducted in determining risk retained. As to surety risks, deduction must also be made of the amount assumed by any established incorporated cosurety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, this section only relates to risks and surplus to policyholders of the insurer's United States branch.

(5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, is considered to include any voluntary reserves which are not required pursuant to law and are determined from the last sworn statement of the insurer on file with the commissioner or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

(6) This section does not apply to life or disability insurance, title insurance, insurance of wet marine and transportation risks, workers' compensation insurance, employer's liability coverages, or any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

History: En. Sec. 80, Ch. 286, L. 1959; R.C.M. 1947, 40-2909; amd. Sec. 49, Ch. 596, L. 1993; amd. Sec. 27, Ch. 379, L. 1995.

33-2-1202 through 33-2-1204 reserved.

33-2-1205. Repealed. Sec. 71, Ch. 596, L. 1993.

History: En. Sec. 81, Ch. 286, L. 1959; R.C.M. 1947, 40-2910; amd. Sec. 8, Ch. 620, L. 1989.

33-2-1206. Bulk reinsurance — foreign or alien insurers. (1) A foreign or alien insurer may reinsure all or substantially all of its insurance in force in Montana or a major class thereof with an agreement of bulk reinsurance, but no such agreement may become effective unless filed with the commissioner and approved by him in writing. The commissioner may in his discretion hold a hearing before approving or disapproving an agreement of bulk reinsurance. Factors to be considered on bulk reinsurance agreements include but are not limited to:

(a) whether the agreement would be inequitable to Montana policyholders;

(b) whether the agreement would substantially reduce security of Montana policyholders; and

(c) whether the agreement would substantially reduce the service to be rendered to Montana policyholders.

(2) The commissioner shall approve or disapprove the agreement within a reasonable time after filing the proposed agreement or, when applicable, after a hearing.

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval.

History: En. 40-2911 by Sec. 1, Ch. 303, L. 1977; R.C.M. 1947, 40-2911; amd. Sec. 4, Ch. 518, L. 1983.

Cross-References

Appeals from Commissioner's decision, 33-1-711.

33-2-1207. Interest in reinsurance. The original insured has no interest in a contract of reinsurance.

History: **En. Sec. 280, Ch. 286, L. 1959; R.C.M. 1947, 40-3723.**

33-2-1208 through 33-2-1210 reserved.

33-2-1211. Bulk reinsurance — stock insurers. (1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof with another insurer by an agreement of bulk reinsurance, but no such agreement shall become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve such agreement within a reasonable time after such filing unless he finds that it is inequitable to the stockholders of the domestic insurer or would substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement, he shall so notify the insurer in writing specifying his reasons therefor.

History: **En. Sec. 464, Ch. 286, L. 1959; R.C.M. 1947, 40-4747.**

Cross-References

Appeals from Commissioner's decision, 33-1-711.

33-2-1212. Bulk reinsurance — mutual insurers. (1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve such agreement within a reasonable time after filing if he finds it to be fair and equitable to each domestic insurer involved and that such reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not so approve, he shall so notify each insurer involved in writing specifying his reasons therefor.

(3) The plan and agreement for such reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the commissioner may approve. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies and have been in effect for more than 1 year.

(4) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto as upon conversion of such insurer, pursuant to 33-3-216, of his equity in the business reinsured as determined under a fair formula approved by the commissioner, which equity shall be based upon such member's equity in the reserves, assets (whether or not "admitted" assets), and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

History: **En. Sec. 465, Ch. 286, L. 1959; R.C.M. 1947, 40-4748.**

Cross-References

Appeals from Commissioner's decision, 33-1-711.

33-2-1213 through 33-2-1215 reserved.

33-2-1216. Credit allowed domestic ceding insurer. (1) Credit for reinsurance is allowed to a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). If the requirements of subsection (4) or (5) are met, the requirements of subsection (7) must also be met.

(2) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(3) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing. An accredited reinsurer is one that:

(a) files with the commissioner evidence of its submission to this state's jurisdiction;

(b) submits to this state's authority to examine its books and records;

(c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and either:

(i) maintains a surplus with regard to policyholders in an amount that is not less than $20 million and whose accreditation has not been denied by the commissioner within 90 days of its submission; or

(ii) maintains a surplus with regard to policyholders in an amount less than $20 million and whose accreditation has been approved by the commissioner.

(4) (a) Subject to subsection (4)(b), credit must be allowed when:

(i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute; and

(ii) the assuming insurer or the United States branch of an alien assuming insurer:

(A) maintains a surplus with regard to policyholders in an amount not less than $20 million; and

(B) submits to the authority of this state to examine its books and records.

(b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.

(b) (i) In the case of a single assuming insurer, the trust must consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a surplus with the trustee of not less than $20 million.

(ii) In the case of a group, including incorporated and individual unincorporated underwriters, the trust must consist of a trusteed account representing the group's liabilities attributable to business written in the United States, and in addition, the group shall maintain a surplus with the trustee of which $100 million must be held jointly for the benefit of United States ceding insurers of any member of the group.

(iii) The incorporated members of the group, as group members, may not be engaged in a business other than underwriting as members of the group and are subject to the same level of solvency regulation and control by the insurance regulator as the unincorporated members. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled.

(iv) In the case of a group of incorporated insurers under common administration:

(A) the provisions of subsection (5)(b)(iv)(B) apply to the group that:

(I) complies with the reporting requirements contained in subsection (5)(a);

(II) has continuously transacted an insurance business outside the United States for at least 3 years immediately prior to making application for accreditation;

(III) submits to this state's authority to examine its books and records and bears the expense of the examination; and

(IV) has aggregate policyholders' surplus of $10 billion;

(B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(II) the group shall maintain a joint surplus with a trustee of which $100 million is held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any liabilities; and

(III) each member of the group shall make available to the commissioner an annual certification of the member's solvency by the insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled.

(c) The trust must be established in a form approved by the commissioner. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this subsection (c) must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year. The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior to the following December 31.

(6) Credit must be allowed when the reinsurance is ceded to an assuming insurer that does not meet the requirements of subsection (2), (3), (4), or (5) but only with respect to the insurance of risks located in a jurisdiction in which the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) (a) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) may not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(i) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, will:

(A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) to designate the commissioner or a designated attorney as its attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(b) Subsection (7)(a)(i) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement.

History: En. Sec. 28, Ch. 596, L. 1993; amd. Sec. 28, Ch. 379, L. 1995.

33-2-1217. Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer — definition. A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of 33-2-1216 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

(1) under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract if the security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer; or

(2) in the case of a trust, in a qualified United States financial institution. This security may be in the form of:

(a) cash;

(b) securities listed by the securities valuation office of the NAIC and qualifying as admitted assets;

(c) clean, irrevocable, unconditional letters of credit that are issued or confirmed by a qualified United States financial institution no later than December 31 of the year for which filing is being made and that are in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first.

(d) any other form of security acceptable to the commissioner.

(3) For the purposes of subsection (2)(c), a "qualified United States financial institution" means an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any of its states;

(b) is regulated, supervised, and examined by United States federal or state authorities with regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the securities valuation office of the national association of insurance commissioners to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(4) For the purposes of this part, except for subsection (2)(c), "qualified United States financial institution" means, with respect to institutions eligible to act as a fiduciary of a trust, an institution that:

(a) is organized or, in the case of a United States branch or agency office of a foreign banking corporation, licensed under the laws of the United States or any of its states and that has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(5) The commissioner may adopt rules implementing the provisions of 33-2-307, 33-2-708, and chapter 12.

History: En. Sec. 29, Ch. 596, L. 1993; amd. Sec. 29, Ch. 379, L. 1995; amd. Sec. 43, Ch. 304, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 304 at end of (5) substituted "chapter 12" for "33-2-806". Amendment effective July 1, 1999.

33-2-1218. Reinsurance agreements affected. Sections 33-2-1216 and 33-2-1217 apply to all cessions after October 1, 1993, under reinsurance agreements that have had an inception, anniversary, or renewal date on or after April 1, 1993.

History: En. Sec. 30, Ch. 596, L. 1993; amd. Sec. 30, Ch. 379, L. 1995.

Part 13

Supervision, Rehabilitation, and Liquidation

Part Cross-References

Notice to Attorney General — court action by state agency, 25-1-501.

33-2-1301. Short title. This part shall be cited as the "Insurers Supervision, Rehabilitation, and Liquidation Act".

History: En. Sec. 1, Ch. 383, L. 1979.

33-2-1302. Construction and purpose. (1) This part may not be interpreted to limit the powers granted the commissioner by other provisions of the law.

(2) This part shall be liberally construed to effect the purpose stated in subsection (3).

(3) The purpose of this part is the protection of the interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through:

(a) early detection of any potentially dangerous condition in an insurer and prompt application of appropriate corrective measures;

(b) improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;

(c) enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

(d) equitable apportionment of any unavoidable loss;

(e) lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the insurer outside this state; and

(f) regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

History: En. Sec. 1, Ch. 383, L. 1979.

33-2-1303. Definitions. For the purposes of this part the following definitions apply:

(1) "Ancillary state" means any state other than a domiciliary state.

(2) "Commissioner" means the commissioner of insurance of this state.

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

(4) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any summary proceeding under 33-2-1321 or 33-2-1322. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(5) "Doing business" includes any of the following acts, whether effected by mail or otherwise:

(a) the issuance or delivery of contracts of insurance to persons resident in this state;

(b) the solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;

(c) the collection of premiums, membership fees, assessments, or other consideration for such contracts;

(d) the transaction of matters subsequent to execution of such contracts and arising out of them; or

(e) operating under a license or certificate of authority, as an insurer, issued by the commissioner.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Fair consideration" is given for property or obligation:

(a) when in exchange for such property or obligation, as a fair equivalent therefor and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(b) when such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

(8) "Foreign country" means any other jurisdiction not in any state.

(9) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

(10) "Guaranty association" means the Montana insurance guaranty association, the workers' compensation security fund, the Montana life and health insurance guaranty association, and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.

(11) (a) "Insolvency" or "insolvent" means:

(i) for an insurer issuing only assessable fire insurance policies, the inability to pay any obligation within 30 days after it becomes payable; or

(ii) for any other insurer, the inability to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(A) any capital and surplus required by law for its organization; or

(B) the total par or stated value of its authorized and issued capital stock;

(iii) as to any insurer licensed to do business in this state as of July 1, 1979, which does not meet the standard established under subsection (11)(a)(ii), for a period not to exceed 3 years from July 1, 1979, the inability to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.

(b) For purposes of this subsection "liabilities" include but are not limited to reserves required by statute or by the commissioner upon a subject company at the time of admission or subsequent thereto.

(12) "Insurer" means any person who has done, purports to do, is doing, or is licensed to do insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by any insurance commissioner. Any other persons included under 33-2-1304 are considered to be insurers.

(13) "Preferred claim" means any claim with respect to which the terms of this part accord priority of payment from the general assets of the insurer.

(14) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.

(15) "Reciprocal state" means any state other than this state in which in substance and effect 33-2-1342(1), 33-2-1381, 33-2-1382, and 33-2-1384 through 33-2-1386 are in force and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(17) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class of persons, but not including any claim secured by general assets.

(18) "State" means any state, district, or territory of the United States.

(19) "Transfer" includes the sale and every other mode, direct or indirect, of disposing of or parting with property or with an interest therein or with the possession thereof or fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor is considered a transfer suffered by the debtor.

History: En. Sec. 2, Ch. 383, L. 1979.

Cross-References

Assets and liabilities — reserves, Title 33, ch. 2, part 5.

Montana Insurance Guaranty Association, Title 33, ch. 10, part 1.

Montana Life and Health Insurance Guaranty Association Act, Title 33, ch. 10, part 2.

33-2-1304. To whom proceedings may be applied. The proceedings authorized by this part may be applied to:

(1) all insurers who are doing or have done insurance business in this state and against whom claims arising from that business may exist now or in the future;

(2) all insurers who purport to do an insurance business in this state;

(3) all insurers who have insureds resident in this state;

(4) all other persons organized or in the process of organizing with the intent to do an insurance business in this state;

(5) all nonprofit service plans and all fraternal benefit societies and beneficial societies; or

(6) all title insurance companies.

History: En. Sec. 3, Ch. 383, L. 1979.

33-2-1305. Who may bring action — procedure exclusive. (1) No delinquency proceeding may be commenced under this part by anyone other than the commissioner, and no court shall have jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.

(2) No court of this state has jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer or praying for an injunction or

restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with this part.

History: **En. Sec. 4, Ch. 383, L. 1979.**

33-2-1306. Personal jurisdiction. In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Montana Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(1) if the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the insurance producer or broker in any action on or incident to the obligation;

(2) if the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced or is an insurance producer or broker of or for the reinsurer in any action on or incident to the reinsurance contract; or

(3) if the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced in any action resulting from such a relationship with the insurer.

History: **En. Sec. 4, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.**

Cross-References

Service on corporations and foreign corporations, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service of process — Commissioner as attorney for service, Title 33, ch. 1, part 6.

33-2-1307. Stay pending out-of-state proceedings. If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

History: **En. Sec. 4, Ch. 383, L. 1979.**

33-2-1308. Venue. All actions herein authorized shall be brought in the district court in the county in which the office of the commissioner is located.

History: **En. Sec. 4, Ch. 383, L. 1979.**

Cross-References

Office of Commissioner — Lewis and Clark County, Art. III, sec. 2, Mont. Const.; Art. VI, sec. 1, Mont. Const.; 2-15-1902.

33-2-1309. Injunctions and orders. (1) Any receiver appointed in a proceeding under this part may at any time apply for and any court of general jurisdiction may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary to prevent:

(a) the transaction of further business;

(b) the transfer of property;

(c) interference with the receiver or with a proceeding under this part;

(d) waste of the insurer's assets;

(e) dissipation and transfer of bank accounts;

(f) the institution or further prosecution of any actions or proceedings;

(g) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;

(h) the levying of execution against the insurer, its assets, or its policyholders;

(i) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(j) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(k) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders or the administration of any proceeding under this part.

(2) The receiver may apply to any court outside of the state for the relief described in subsection (1).

History: En. Sec. 5, Ch. 383, L. 1979.

Cross-References

Injunctions, Title 27, ch. 19.

33-2-1310. Cooperation of officers, owners, and employees. (1) Any officer, manager, director, trustee, owner, employee, or insurance producer of any insurer or any other persons with authority over or in charge of any segment of the insurer's affairs shall cooperate with the commissioner in any proceeding under this part or any investigation preliminary to the proceeding. The term "person" as used in this section includes any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer. "To cooperate" includes but is not limited to the following:

(a) replying promptly in writing to any inquiry from the commissioner requesting such a reply; and

(b) making available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his possession, custody, or control.

(2) No person may obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings or other orders.

(4) Any person included within subsection (1) who fails to cooperate with the commissioner or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto or who violates any order the commissioner issued validly under this part may:

(a) be sentenced to pay a fine not exceeding $10,000 or to undergo imprisonment for a term of not more than 1 year, or both; or

(b) after a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed $10,000 and to the revocation or suspension of any insurance licenses issued by the commissioner.

History: En. Sec. 6, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Appeals from Commissioner's decision, 33-1-711.

Misdemeanor, 45-2-101.

33-2-1311. Repealed. Sec. 69, Ch. 472, L. 1999.

History: En. Sec. 7, Ch. 383, L. 1979.

33-2-1312 through 33-2-1320 reserved.

33-2-1321. Commissioner's summary orders and supervision proceedings. (1) Whenever the commissioner determines, after a hearing held under subsection (5), that any domestic insurer has committed or engaged in or is about to commit or engage in any act, practice, or transaction that would subject it to delinquency proceedings under this part, he may make and serve upon the insurer and any other persons involved such orders as are reasonably necessary to correct or eliminate such conduct.

(2) If upon examination or at any other time the commissioner determines that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if such domestic insurer gives its consent, then the commissioner shall notify the insurer of his determination and furnish to the insurer a written list of the commissioner's requirements to abate his determination.

(3) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (1) or (2), he shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (1) and (2) and may also require that the insurer may not do any of the following things during the period of supervision without the prior approval of the commissioner or the supervisor:

(a) dispose of, convey, or encumber any of its assets or its business in force;
(b) withdraw from any of its bank accounts;
(c) lend any of its funds;
(d) invest any of its funds;
(e) incur any debt, obligation, or liability;
(f) merge or consolidate with another company; or
(g) enter into any new reinsurance contract or treaty.

(4) Any insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, has 60 days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply within that time, the commissioner may institute proceedings under 33-2-1331 or 33-2-1341 to have a rehabilitator or liquidator appointed or extend the period of supervision.

(5) The notice of hearing under subsection (1) and any order issued pursuant to such subsection shall be served upon the insurer pursuant to the applicable rules of civil or administrative procedure. The notice of hearing shall state the time and place of hearing and the conduct, condition, or ground upon which the commissioner would base his order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 days or more than 30 days after notice is served and shall be either in Lewis and Clark County or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall hold all hearings under subsection (1) privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(6) (a) Any insurer subject to an order under subsection (2) may request a hearing to review that order. Such a hearing shall be held as provided in subsection (5), but the request for a hearing shall not stay the effect of the order.

(b) If the commissioner issues an order under subsection (2), the insurer may, at any time, waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be entitled to judicial review of any order issued by the commissioner.

(7) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying wherein the action complained of is believed not to be in the best interest of the insurer.

(8) If any person has violated any supervision order issued under this section which as to him was then still in effect, he is subject to a civil penalty imposed by the district court not to exceed $10,000.

(9) The commissioner may apply for and any court of general jurisdiction may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary to enforce a supervision order.

(10) If any person subject to the provisions of this part, including any person described in 33-2-1310(1), knowingly violates any valid order of the commissioner issued under the provisions of this section and, as a result of such violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, said person is personally liable to the insurer for the amount of any such reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the district court to recover the amount of the reduction or loss together with any costs.

History: En. Sec. 9, Ch. 383, L. 1979.

Cross-References

Hearings and meetings of public agencies open to public, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

Notice of hearing — administrative proceeding, 2-3-104, 2-4-601.

Judicial review of contested cases, Title 2, ch. 4, part 7.

Injunctions, Title 27, ch. 19.

33-2-1322. Court's seizure order. (1) The commissioner may file in a district court of this state a petition alleging, with respect to a domestic insurer:

(a) that there exist grounds that would justify a court order for a formal delinquency proceeding against an insurer under this part;

(b) that the interests of policyholders, creditors, or the public will be endangered by delay; and

(c) the contents of an order considered necessary by the commissioner.

(2) Upon a filing under subsection (1), the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer and of the premises occupied by it for transaction of its business and until further order of the court enjoin the insurer and its officers, managers, insurance producers, and employees from disposition of its property and from transaction of its business except with the written consent of the commissioner.

(3) The court shall specify in the order what its duration shall be, which shall be such time as the court considers necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold such hearings as it considers desirable after such notice as it considers appropriate and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this part after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this part shall ipso facto vacate the seizure order.

(4) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(5) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such a hearing and review not more than 15 days after the request. A hearing under this subsection may be held privately in chambers, and it shall be so held if the insurer proceeded against so requests.

(6) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice

be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

History: **En. Sec. 10, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.**

Cross-References

Initiation of actions, Rule 3, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

33-2-1323. Confidentiality of proceedings. In all proceedings and judicial reviews under 33-2-1321 and 33-2-1322, all records of the insurer, other documents, and all files and court records and papers of the commissioner, so far as they pertain to or are a part of the record of the proceedings, remain confidential except as necessary to obtain compliance therewith, unless the district court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the district court shall be held by him in a confidential file.

History: **En. Sec. 11, Ch. 383, L. 1979.**

Cross-References

Deliberations of state agencies open to public, Art. II, sec. 9, Mont. Const.; 2-3-203.

Records of state agencies available for public inspection, Art. II, sec. 9, Mont. Const.; 2-6-104.

33-2-1324 through 33-2-1330 reserved.

33-2-1331. Grounds for rehabilitation. The commissioner may apply by petition to a district court for an order authorizing the commissioner to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) The insurer is in such condition that the further transaction of business would be financially hazardous to its policyholders, creditors, or the public.

(2) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general insurance producer, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

(4) Control of the insurer, whether by stock ownership or otherwise and whether direct or indirect, is in a person found after notice and hearing to be untrustworthy.

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general insurance producer, director or trustee, employee, or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and the person's influence on management.

(6) After demand by the commissioner under 33-1-408 or under this part, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records or those of any subsidiary or related company within the control of the insurer or those of any person having executive authority in the insurer so far as they pertain to the insurer.

(7) Without first obtaining the written consent of the commissioner, the insurer has transferred or attempted to transfer, in a manner contrary to chapter 2, part 11, or chapter 2, part 12, of Title 33, substantially its entire property or

business or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and the appointment has been made or is imminent, and the appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under this part.

(9) Within the previous 4 years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the commissioner under 33-2-1321.

(10) The insurer has failed to pay within 60 days after the due date any obligation to any state or any subdivision of the state or any judgment entered in any state, if the court in which the judgment was entered had jurisdiction over the subject matter, except that nonpayment may not be a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(11) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately.

(12) The board of directors or the holders of a majority of the shares entitled to vote request or consent to rehabilitation under this part.

History: En. Sec. 12, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 50, Ch. 596, L. 1993.

Cross-References

Fraud, 28-2-404 through 28-2-406.

Suspension or revocation of certificate of authority — special grounds, 33-2-119.

Theft, 45-6-301.

Defrauding creditors, 45-6-315.

Forgery, 45-6-325.

33-2-1332. Rehabilitation orders. (1) An order to rehabilitate the business of a domestic insurer or an alien insurer domiciled in this state shall appoint the commissioner the rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court or clerk and recorder of the county in which the principal business of the company is conducted or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the county clerk and recorder would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(2) Any order issued under this section shall require accounting to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in its order.

(3) Entry of an order of rehabilitation does not constitute an anticipatory breach of any contracts of the insurer.

History: En. Sec. 13, Ch. 383, L. 1979.

Cross-References

When delay or failure to perform or offer to perform excused, 28-1-1301.

33-2-1333. Powers and duties of the rehabilitator. (1) The commissioner as rehabilitator may appoint one or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ counsel, clerks, and assistants. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of his office. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of his office out of the first available money of the insurer.

(2) The rehabilitator may take such action as necessary to reform and revitalize the insurer. He shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, insurance producer, broker, employee, or other person, he may pursue all appropriate legal remedies on behalf of the insurer.

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies for such period and to such an extent as may be necessary.

(5) The rehabilitator shall have the power under 33-2-1351 and 33-2-1352 to avoid fraudulent transfers.

History: En. Sec. 14, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

33-2-1334. Effect of proceedings on pending and potential litigation. (1) Any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for 90 days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any

action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied.

History: **En. Sec. 15, Ch. 383, L. 1979.**

Cross-References

Statutes of limitation, Title 27, ch. 2.

33-2-1335. Standing of guaranty associations in proceedings. Any guaranty association or foreign guaranty association covering life or health insurance or annuities has standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

History: **En. Sec. 15, Ch. 383, L. 1979.**

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1336. Termination of rehabilitation. (1) Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile, the commissioner may petition the district court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under 33-2-1341. The district court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(2) The rehabilitator may at any time petition the district court for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under 33-2-1331 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The district court may also make that finding and issue that order at any time upon its own motion.

History: **En. Sec. 16, Ch. 383, L. 1979.**

33-2-1337 through 33-2-1340 reserved.

33-2-1341. Grounds for liquidation. The commissioner may petition the district court for an order directing him to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) of any ground for an order of rehabilitation as specified in 33-2-1331, whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) that the insurer is insolvent; or

(3) that the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

History: **En. Sec. 17, Ch. 383, L. 1979.**

33-2-1342. Liquidation orders. (1) An order to liquidate the business of a domestic insurer must appoint the commissioner and the commissioner's successors in office liquidator and shall direct the liquidator to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court and the clerk and recorder of the county in which its principal office or place of business is located or, in the case of real estate, with the clerk and recorder of the county where the property is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(2) Upon issuance of the order, the rights and liabilities of any insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided in 33-2-1343 and 33-2-1366.

(3) An order to liquidate the business of an alien insurer domiciled in this state must be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States are the only assets and business included in the order.

(4) At the time of petitioning for an order of liquidation or at any time after petitioning, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of insolvency. After providing notice and hearing as it considers proper, the court may make the declaration.

(5) Any order issued under this section must require accounting to the court by the liquidator. Accountings must be at intervals as the court specifies in its order.

(6) (a) Within 5 days after the initiation of an appeal of an order of liquidation that has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. The plan must provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation, including the ground of insolvency. In the event that the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties, as well as other policyholders and claimants, as the commissioner finds to be fair and equitable, considering the relative circumstances of the policyholders and claimants. The court shall examine the plan submitted by the commissioner, and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action does not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(b) The appeal pendency plan may not supersede or affect the obligations of any insurance guaranty association.

(c) A plan must provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, so that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. If an order of liquidation is set aside upon any appeal, the company may not be released from delinquency proceedings unless all funds advanced by any guaranty association, including reasonable administrative expenses that relate to obligations of the company, have been repaid in full, together with interest at the judgment rate of interest, or unless an arrangement for repayment has been made with the consent of all applicable guaranty associations.

History: En. Sec. 18, Ch. 383, L. 1979; amd. Sec. 51, Ch. 596, L. 1993.

33-2-1343. Continuance of policy coverage. (1) All policies, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

(a) a period of 30 days from the date of entry of the liquidation orders;

(b) the expiration of the policy coverage;

(c) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or

(d) the liquidator has effected a transfer of the policy obligation pursuant to 33-2-1345(1)(h).

(2) An order of liquidation under 33-2-1342 terminates coverages at the time specified in subsection (1) for purposes of any other statute.

(3) Policies of life or health insurance or annuities continue in force for such period and under such terms as provided by any applicable guaranty association or foreign guaranty association.

(4) Policies of life or health insurance or annuities or any period or coverage of such policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (1) and (2).

History: En. Sec. 19, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1344. Dissolution of insurer. The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time he applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

History: En. Sec. 20, Ch. 383, L. 1979.

33-2-1345. Powers of liquidator. (1) The liquidator may:

(a) appoint a special deputy to act for him under this part and determine his reasonable compensation. The special deputy has all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(b) employ insurance producers, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel necessary to assist in the liquidation;

(c) fix the reasonable compensation of employees and insurance producers, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(d) pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the commissioner's office. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of his office out of the first available money of the insurer.

(e) hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his testimony after it has been correctly reduced to writing and in connection therewith require the production of any books, papers, records, or other documents which he considers relevant to the inquiry;

(f) collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against such debts;

(ii) do such other acts as are necessary to collect, conserve, or protect its assets or property, including selling, compounding, compromising, or assigning debts for collection purposes on such terms and conditions as he considers best; and

(iii) pursue any creditor's remedies available to enforce his claims;

(g) conduct public and private sales of the property of the insurer;

(h) use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under 33-2-1371;

(i) acquire, encumber, lease, improve, sell, or transfer any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(j) borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(k) enter into such contracts as are necessary to carry out the order to liquidate and affirm or disavow any contracts to which the insurer is a party;

(l) continue to prosecute and institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he considers unprofitable to pursue further. If the insurer is dissolved under 33-2-1344, he shall have the power to apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

(m) prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person;

(n) remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.

(o) deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(p) invest all sums not currently needed, unless the court orders otherwise;

(q) file any necessary documents for record in the office of any county clerk and recorder in this state or elsewhere where property of the insurer is located;

(r) assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations.

(s) exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with 33-2-1351 through 33-2-1357;

(t) intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and act as the receiver or trustee whenever the appointment is offered;

(u) enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;

(v) exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this part.

(2) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated or otherwise provided for as may be necessary for the accomplishment of or in aid of the purpose of liquidation.

History: En. Sec. 21, Ch. 383, L. 1979; amd. Sec. 143, Ch. 575, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Intervention in proceedings, Rule 24, M.R.Civ.P. (see Title 25, ch. 20).

Statutes of limitation, Title 27, ch. 2.

Receivers — general provisions, Title 27, ch. 20, part 1.

Statute of frauds, 28-2-903.

Usury, 31-1-107, 31-1-108.

Guaranty associations, Title 33, ch. 10.

33-2-1346. Notice to creditors and others. (1) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(a) by first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;

(b) by first-class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;

(c) by first-class mail to all insurance producers of the insurer;

(d) by first-class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last-known address as indicated by the records of the insurer; and

(e) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in other locations that the liquidator considers appropriate.

(2) Notice to potential claimants under subsection (1) requires claimants to file with the liquidator their claims together with proper proofs of the claims under 33-2-1365, on or before a date the liquidator specifies in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants have a duty to keep the liquidator informed of any changes of address.

(3) (a) Notice under subsection (1) to insurance producers of the insurer and to potential claimants who are policyholders must include, when applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

(b) The liquidator shall promptly provide to the guaranty associations information concerning the identities and addresses of the policyholders and their policy coverages as is within the liquidator's possession or control and shall otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits, including coverage of claims and continuation or termination of coverages.

(4) If notice is given in accordance with this section, the distribution of assets of the insurer under this part is conclusive with respect to all claimants, whether or not they received notice.

History: En. Sec. 22, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 52, Ch. 596, L. 1993.

33-2-1347. Duty of insurance producers to give notice. (1) Every person who receives notice in the form prescribed in 33-2-1346 that an insurer which he represents as an insurance producer is the subject of a liquidation order shall within 15 days of such notice give notice of the liquidation order. The notice shall be sent by first-class mail to the last address contained in the insurance producer's records to each policyholder or other person named in any policy issued through the insurance producer by the insurer if he has a record of the address of the policyholder or other person. A policy shall be considered issued through an insurance producer if the insurance producer has a property interest in the expiration of the policy or if the insurance producer has had in his possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the insurance producer, identification of the policy impaired, and the nature of the impairment, including termination of coverage as described in 33-2-1343. Notice by a general insurance producer satisfies the notice requirement for any insurance producers under contract to him. Each insurance producer obligated to give notice under this section shall file a report of compliance with the liquidator.

(2) Any insurance producer failing to give notice or file a report of compliance as required in subsection (1) may be subject to payment of a penalty of not more than $1,000 and may have his license suspended, after a hearing held by the commissioner.

(3) The liquidator may waive the duties imposed by this section if he determines that other notice to the policyholders of the insurer under liquidation is adequate.

History: En. Sec. 23, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Licenses — administrative proceedings, 2-4-631.

Hearings by Commissioner, 33-1-701.

Insurance producer's license — suspension, Title 33, ch. 17, part 10.

33-2-1348. Effect of proceedings on pending and potential litigation — actions by liquidator. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity may be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, he may intervene in the action. The liquidator may defend any action in which he intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within 2 years or such time in addition to 2 years as applicable law may permit, institute an action

or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. When, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice, or the like or when in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act and when in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act required of or permitted to the insurer within a period of 180 days subsequent to the entry of an order for liquidation or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) No statute of limitations or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the petition is denied.

History: En. Sec. 24, Ch. 383, L. 1979.

Cross-References

Statutes of limitation, Title 27, ch. 2.

33-2-1349. Standing of guaranty associations in proceedings. Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of an insurer if such association is or may become liable to act as a result of the liquidation.

History: En. Sec. 24, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1350. Collection and listing of assets. (1) As soon as practicable after the liquidation order but not later than 120 days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the clerk of the district court, and one copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

(2) The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

(3) A submission to the court for disbursement of assets in accordance with 33-2-1363 fulfills the requirements of subsection (1) of this section.

History: En. Sec. 25, Ch. 383, L. 1979.

33-2-1351. Fraudulent transfers prior to petition. (1) Every transfer made or suffered and every obligation incurred by an insurer within 1 year prior to the filing of a successful petition for rehabilitation or liquidation under this part is fraudulent as to then existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this part which is fraudulent under this section may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee who in good faith has given a consideration less than fair for such transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver succeeds to and may enforce the rights of the purchaser, lienor, or obligee.

(2) (a) A transfer of property other than real property is considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under 33-2-1353(3).

(b) A transfer of real property is considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) Any transaction of the insurer with a reinsurer is considered fraudulent and may be avoided by the receiver under subsection (1) if:

(a) the transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and

(b) any part of the transaction took place within 1 year prior to the date of filing of the petition through which the receivership was commenced.

History: En. Sec. 26, Ch. 383, L. 1979.

Cross-References

Fraudulent conveyances, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

33-2-1352. Fraudulent transfer after petition. (1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the county clerk and recorder in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) a transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

(b) a person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his order, with the same effect as if the petition were not pending;

(c) a person having actual knowledge of the pending rehabilitation or liquidation is considered not acting in good faith;

(d) a person asserting the validity of a transfer under this section has the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Nothing in this part impairs the negotiability of currency or negotiable instruments.

History: En. Sec. 27, Ch. 383, L. 1979.

Cross-References

Fraudulent conveyances, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

Effect of recordation — real property, 70-21-302.

33-2-1353. Voidable preferences and liens. (1) (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within 1 year before the filing of a successful petition for liquidation under this part, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be considered preferences if made or suffered within 1 year before the filing of the successful petition for rehabilitation or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator if:

(i) the insurer was insolvent at the time of the transfer;

(ii) the transfer was made within 4 months before the filing of the petition;

(iii) the creditor receiving it or to be benefited thereby or his agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(iv) the creditor receiving it was an officer or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer, whether or not he held such position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him. When a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title passes to the liquidator.

(2) (a) A transfer of property other than real property is considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property is considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3) (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchaser could obtain rights superior to the rights of a transferee, within the meaning of subsection (2), if such consequences would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is considered under subsection (2) to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien considered voidable under subsection (1)(b) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this part which results in a liquidation order, the indemnifying transfer or lien shall also be considered voidable.

(6) The property affected by any lien considered voidable under subsections (1) and (5) shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

History: **En. Sec. 28, Ch. 383, L. 1979.**

Cross-References

U.C.C. — secured transactions, Title 30, ch. 9.

Fraudulent conveyances, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

Priority of liens, 71-3-113.

33-2-1354. Procedure for voiding preferences and liens. (1) The district court has summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under 33-2-1353 through 33-2-1357. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. When an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien and, if the value is less than the amount for which the property is indemnity or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court shall fix.

(2) The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or, when the property is retained under subsection (1), to the extent of the amount paid to the liquidator.

History: En. Sec. 28, Ch. 383, L. 1979.

33-2-1355. Set off for further credit given in good faith. If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him.

History: En. Sec. 28, Ch. 383, L. 1979.

33-2-1356. Transactions to pay for attorneys' services. If an insurer, directly or indirectly, within 4 months before the filing of a successful petition for liquidation under this part or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney at law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court and the excess may be recovered by the liquidator for the benefit of the estate, provided that where the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney at law for services rendered or to be rendered shall be governed by the provision of 33-2-1353(1)(b)(iv).

History: En. Sec. 28, Ch. 383, L. 1979.

33-2-1357. Personal liability. (1) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is reasonable cause to so believe if the transfer was made within 4 months before the date of filing of this successful petition for liquidation.

(2) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under 33-2-1353(1) is personally liable therefor and is bound to account to the liquidator.

(3) Nothing in this section prejudices any other claim by the liquidator against any person.

History: En. Sec. 28, Ch. 383, L. 1979.

33-2-1358. Claims of holders of void or voidable rights. (1) No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this part shall be allowed unless he surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(2) A claim allowable under subsection (1) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under 33-2-1364 if filed within 30 days from the date of the avoidance or within the further time allowed by the court under subsection (1).

History: **En. Sec. 29, Ch. 383, L. 1979.**

33-2-1359. Setoffs. (1) Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this part must be set off and the balance only allowed or paid, except as provided in 33-2-1362 and subsection (2) of this section.

(2) A setoff may not be allowed in favor of any person when:

(a) the obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(b) the obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff; or

(c) the obligation of the person is to pay an assessment levied against the members or subscribers of the insurer or is to pay a balance upon a subscription to the capital stock of the insurer or is in any other way in the nature of a capital contribution.

History: **En. Sec. 30, Ch. 383, L. 1979; amd. Sec. 10, Ch. 531, L. 1997.**

33-2-1360. Assessments against members of insurer. (1) As soon as practicable but not more than 2 years from the date of an order of liquidation under 33-2-1342 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

(a) the reasonable value of the assets of the insurer;

(b) the insurer's probable total liabilities;

(c) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and

(d) a recommendation as to whether or not an assessment should be made and in what amount.

(2) (a) Upon the basis of the report provided in subsection (1), including any supplements and amendments thereto, the district court may levy one or more assessments against all members of the insurer who are subject to assessment.

(b) Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(3) After levy of assessment under subsection (2), the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment therefor.

(4) The liquidator shall give notice of the order to show cause by publication and by first-class mail to each member liable thereunder mailed to his last-known address as it appears on the insurer's records at least 20 days before the return day of the order to show cause.

(5) (a) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (3), the court shall make an order adjudging the member liable for the amount of the assessment against him, pursuant to subsection (3), together with costs, and the liquidator shall have a judgment against the member therefor.

(b) If on or before such return day the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. If the commissioner determines that such objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

(6) The liquidator may enforce any order or collect any judgment under subsection (5) by any lawful means.

History: En. Sec. 31, Ch. 383, L. 1979.

33-2-1361. Reinsurer's liability. The amount recoverable by the liquidator from reinsurers may not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor may not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation.

History: En. Sec. 32, Ch. 383, L. 1979.

33-2-1362. Recovery of premiums owed. (1) (a) An insurance producer or any other person responsible for the payment of a premium, other than the insured, shall be obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator may recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs or both may not be allowed to an insurance producer for any amounts advanced to the insurer by the insurance producer on behalf of but in the absence of a payment by the insured.

(b) An insured shall pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) suspend or revoke or refuse to renew the licenses of any offending party;

(b) impose a penalty of not more than $1,000 for each act in violation of this section by such party.

(3) Before the commissioner may take any action as set forth in subsection (2), he shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least 10 days thereafter, when a hearing on the matter shall be held. After such hearing or upon failure of the accused to appear at such hearing, the commissioner, if he finds a violation, shall impose such penalties under subsection (2) as he considers advisable.

(4) When the commissioner takes action in any of the ways set out in subsection (2), the party aggrieved may appeal from the action to the district court.

History: En. Sec. 33, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Licensure — administrative proceedings, 2-4-631.

Hearing before Commissioner, 33-1-701.

Appeals from Commissioner's decision, 33-1-711.

Suspension or revocation of insurance producer's license, Title 33, ch. 17, part 10.

33-2-1363. Domiciliary liquidator's proposal to distribute assets. (1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as such assets become available, to a guaranty association or foreign guaranty association having obligations because of such insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(2) The proposal shall at least include provisions for:

(a) reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in 33-2-1371, classes 1 and 2;

(b) disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(c) equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;

(d) the securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in 33-2-1371 in accordance with such priorities (no bond may be required of any such association); and

(e) a full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the liquidator and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(4) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such associations.

(5) Notice of such application shall be given to the association in and to the commissioners of insurance of each of the states. Any notice shall be considered to have been given when deposited in the United States certified mails, first-class postage prepaid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with subsections (2)(a) and (2)(b).

History: En. Sec. 34, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1364. Filing of claims. (1) Proof of all claims shall be filed with the liquidator in the form required by 33-2-1365 on or before the last day for filing specified in the notice required under 33-2-1346, except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator requires.

(2) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he were not late, to the extent that any

such payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) the existence of the claim was not known to the claimant, and his claim was filed as promptly after learning of it as reasonably possible;

(b) a transfer to a creditor was avoided under 33-2-1351 through 33-2-1357 or was voluntarily surrendered under 33-2-1358, and the filing satisfies the conditions of 33-2-1358; and

(c) the valuation under 33-2-1370 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(3) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late if such claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where such payments were made and expenses incurred as provided by law.

(4) The liquidator may consider any claim filed late which is not covered by subsection (2) and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

History: En. Sec. 35, Ch. 383, L. 1979.

33-2-1365. Proof of claim. (1) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(a) the particulars of the claim, including the consideration given for it;

(b) the identity and amount of the security on the claim;

(c) the payments made on the debt, if any;

(d) that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;

(e) any right of priority of payment or other specific right asserted by the claimants;

(f) a copy of the written instrument which is the foundation of the claim;

(g) the name and address of the claimant and the attorney who represents him, if any.

(2) No claim need be considered or allowed if it does not contain all the information in subsection (1) which may be applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

(3) At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection (1) and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(4) No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within 4 months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

(5) All claims of a guaranty association or foreign guaranty association shall be in such form and contain such substantiation as may be agreed to by the association and the liquidator.

History: En. Sec. 36, Ch. 383, L. 1979.

33-2-1366. Special claims. (1) The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(2) A claim may be allowed, even if contingent, if it is filed in accordance with 33-2-1364. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(3) Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that such claims may be discounted at the legal rate of interest.

(4) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under 33-2-1332 or 33-2-1342.

History: En. Sec. 37, Ch. 383, L. 1979.

Cross-References

Legal rate of interest, 31-1-106.

33-2-1367. Claims of insureds or claimants against insureds. (1) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(2) Whether or not the third party files a claim, the insured may file a claim on his own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by 33-2-1346, whichever is later, he is an unexcused late filer.

(3) The liquidator shall make his recommendations to the court under 33-2-1371 for the allowance of an insured's claim under subsection (2), after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, he shall reconsider the claim on the bases of additional information and amend his recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it thinks appropriate. As claims against the insured are settled or barred, the insured shall be paid, from the amount withheld, the same percentage dividend as was paid on other claims of like property, based on the lesser of the amount actually recovered from the insured by action or paid by agreement, plus the reasonable costs and expenses of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (3). If any insured's claim is subsequently reduced under subsection (3), the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

(5) No claim may be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

History: En. Sec. 38, Ch. 383, L. 1979.

Cross-References

Guaranty associations, Title 33, ch. 10.

33-2-1368. Disputed claims. (1) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his attorney by first-class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file his objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(2) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or his attorney and to any other persons directly affected not less than 10 or more than 30 days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his recommendation.

History: En. Sec. 39, Ch. 383, L. 1979.

33-2-1369. Claims of sureties. (1) Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person.

(2) The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association.

History: En. Sec. 40, Ch. 383, L. 1979.

Cross-References

When surety may require creditor to pursue remedy, 28-11-416.

Surety's right to reimbursement and contribution, 28-11-417.

33-2-1370. Claims of secured creditors. (1) The value of any security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(a) by converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditors; or

(b) by agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

(2) The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders his security to the liquidator, the entire claim shall be allowed as if unsecured.

History: En. Sec. 41, Ch. 383, L. 1979.

Cross-References

Collection rights of secured party, 30-9-502.

33-2-1371. Priority of distribution. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be as follows:

(1) Class 1—the costs and expenses of administration, including but not limited to the following:

(a) the actual and necessary costs of preserving or recovering the assets of the insurer;

(b) compensation for all services rendered in the liquidation;

(c) any necessary filing fees;

(d) the fees and mileage payable to witnesses;

(e) reasonable attorney's fees;

(f) the reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(2) Class 2—debts due to employees for services performed to the extent that they do not exceed $1,000 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. Such priority is in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(3) Class 3—all claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance or as gratuities. No payment by an employer to his employee may be treated as a gratuity.

(4) Class 4—claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

(5) Class 5—claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (8).

(6) Class 6—claims filed late or any other claims other than claims under subsections (7) and (8).

(7) Class 7—surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(8) Class 8—the claims of shareholders or other owners.

History: En. Sec. 42, Ch. 383, L. 1979.

33-2-1372. Liquidator's recommendations to the court concerning claims. (1) The liquidator shall review all claims duly filed in the liquidation and make such further investigation as he considers necessary. He may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under 33-2-1368. As soon as practicable, he shall present to the court a report of the claims against the insurer with his recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within a period of 60 days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to 33-2-1368. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

History: En. Sec. 43, Ch. 383, L. 1979.

33-2-1373. Distribution of assets. Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

History: En. Sec. 44, Ch. 383, L. 1979.

33-2-1374. Unclaimed and withheld funds. (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer and shall be paid without interest except in accordance with 33-2-1371 to the person entitled thereto or his legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit not claimed within 6 years from the discharge of the liquidator shall be considered to have been abandoned and shall be escheated without formal escheat proceedings and be deposited in the general fund.

(2) All funds withheld under 33-2-1366 and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid by him in accordance with 33-2-1371. Any sums remaining which under 33-2-1371 would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection (1) unless the commissioner in his discretion petitions the court to reopen the liquidation under 33-2-1376.

History: En. Sec. 45, Ch. 383, L. 1979.

Cross-References

Escheated property — claims, Title 72, ch. 14.

33-2-1375. Termination of liquidation proceedings. (1) When all assets justifying the expense of collection and distribution have been collected and distributed under this part, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be considered appropriate.

(2) Any other person may apply to the court at any time for an order under subsection (1). If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

History: **En. Sec. 46, Ch. 383, L. 1979.**

33-2-1376. Reopening liquidation. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the district court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

History: **En. Sec. 47, Ch. 383, L. 1979.**

33-2-1377. Disposition of records during and after liquidation. When it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

History: **En. Sec. 48, Ch. 383, L. 1979.**

Cross-References

Public records management, Title 2, ch. 6, part 2.

33-2-1378. Audit of the receiver's books. The district court may, as it considers desirable, cause audits to be made of the books of the commissioner relating to any receivership established under this part, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

History: **En. Sec. 49, Ch. 383, L. 1979.**

33-2-1379. Conservation of property of foreign or alien insurers. (1) If a domiciliary liquidator has not been appointed, the commissioner may apply to the district court by verified petition for an order directing him to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

(a) any of the grounds in 33-2-1331;

(b) that any of its property has been sequestered by official action in its domiciliary state or in any other state;

(c) that enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;

(d) that its certificate of authority to do business in this state has been revoked or that none was ever issued;

(e) that there are residents of this state with outstanding claims or outstanding policies.

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) The court may issue the order in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(4) The conservator may at any time petition for and the court may grant an order under 33-2-1380 to liquidate assets of a foreign or alien insurer under conservation or, if appropriate, for an order under 33-2-1382 to be appointed ancillary receiver.

(5) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is

no longer necessary, it shall order the insurer to be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if such motion is denied, all costs shall be assessed against such party.

History: **En. Sec. 50, Ch. 383, L. 1979.**

33-2-1380. Liquidation of assets of foreign or alien insurers. (1) If no domiciliary receiver has been appointed, the commissioner may apply to the district court by verified petition for an order directing him to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:

(a) any of the grounds in 33-2-1331 or 33-2-1341; or

(b) any of the grounds specified in subsections (1)(b) through (1)(d) of 33-2-1379.

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given notice and time to respond thereto as reasonable under the circumstances.

(3) If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under 33-2-1382. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under 33-2-1382.

(5) On the same grounds as specified in subsection (1), the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction or any lesser part thereof that the commissioner considers desirable for the protection of the policyholders and creditors in this state.

(6) The court may order the commissioner, when he has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under such rules as to the liquidation of insurers under this part as are otherwise compatible with the provisions of this section.

History: **En. Sec. 51, Ch. 383, L. 1979.**

33-2-1381. Domiciliary liquidators in other states. (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under 33-2-1382(3), be vested by operation of law with the title to all of the assets, property, contracts, and rights of action, insurance producers' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator has the immediate right to recover balances due from insurance producers and to obtain possession of the books, accounts, and other records of the insurer located in this state. He also has the right to recover all other assets of the insurer located in this state, subject to 33-2-1382.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state is vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under 33-2-1379 or 33-2-1380 or for an ancillary receivership under 33-2-1382 or, after approval by the district court, may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(3) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

History: En. Sec. 52, Ch. 383, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

33-2-1382. Ancillary formal proceedings. (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the district court requesting appointment as ancillary receiver in this state:

(a) if he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(b) if the protection of creditors or policyholders in this state so requires.

(2) The court may issue an order appointing an ancillary receiver in whatever terms it considers appropriate. The filing or recording of the order with the county clerk and recorder imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded.

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (3) for ancillary receivers appointed in this state.

History: En. Sec. 53, Ch. 383, L. 1979; amd. Sec. 144, Ch. 575, L. 1981.

Cross-References

Recorder of deeds — County Clerk and Recorder, 7-4-2619, 70-21-201.

33-2-1383. Ancillary summary proceedings. The commissioner in his sole discretion may institute proceedings under 33-2-1321 through 33-2-1323 at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state.

History: En. Sec. 54, Ch. 383, L. 1979.

33-2-1384. Claims of nonresidents against insurers domiciled in this state. (1) In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal states must file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in this part or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in 33-2-1385(2) with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states is conclusive as to amount and as to priority against special deposits or other security located in such ancillary states but is not conclusive with respect to priorities against general assets under 33-2-1371.

History: En. Sec. 55, Ch. 383, L. 1979.

33-2-1385. Claims of residents against insurers domiciled in reciprocal states. (1) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state or in ancillary proceedings, if any, in this state. If a claimant elects to prove his claim in this state, he shall file his claim with the liquidator in the manner provided in 33-2-1364 and 33-2-1365. The ancillary receiver shall make his recommendation to the court as under 33-2-1372. He shall also arrange a date for hearing if necessary under 33-2-1368 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service, at least 40 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of his intention to contest the claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

(3) The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

History: En. Sec. 56, Ch. 383, L. 1979.

Cross-References

Residence — rules for determining, 1-1-215.

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

33-2-1386. Exemption from legal process during pendency of liquidation. During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment, or levy of execution may be commenced or maintained in this state against the delinquent insurer or its assets.

History: En. Sec. 57, Ch. 383, L. 1979.

33-2-1387. Interstate priorities. (1) In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state is given priority against the special

deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security in accordance with 33-2-1370, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

History: En. Sec. 58, Ch. 383, L. 1979.

33-2-1388. Subordination of claims for noncooperation of ancillary receiver. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under 33-2-1371(7).

History: En. Sec. 59, Ch. 383, L. 1979.

33-2-1389 and 33-2-1390 reserved.

33-2-1391. Condition on release from delinquency proceedings. An insurer that is subject to any delinquency proceeding, whether formal, informal, administrative, or judicial, may not:

(1) be released from the proceeding, unless the proceeding is converted to a judicial rehabilitation or liquidation proceeding;

(2) be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;

(3) be returned to the control of its shareholders or private management; or

(4) have any of its assets returned to the control of its shareholders or private management until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses of the guaranty associations and interest on all payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the insurer has been approved by the guaranty association.

History: En. Sec. 35, Ch. 596, L. 1993.

33-2-1392. Indemnification of rehabilitator, liquidator, and employees — persons covered. (1) The persons entitled to protection under 33-2-1393 and 33-2-1394 are:

(a) all rehabilitators and liquidators responsible for the conduct of a delinquency proceeding under Title 33, chapter 2, including present and former rehabilitators and liquidators; and

(b) the employees of the rehabilitators and liquidators, including all present and former special deputies and assistant special deputies appointed by the commissioner, and all persons whom the commissioner, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under Title 33, chapter 2.

(2) Attorneys, accountants, auditors, and other professional persons or firms, who are retained by the rehabilitator or liquidator as independent contractors, and their employees are not considered employees of the rehabilitator or liquidator for

purposes of any cause of action initiated by the rehabilitator or liquidator against the independent contractor in the name of the rehabilitation or liquidation estate.

History: **En. Sec. 36, Ch. 596, L. 1993.**

33-2-1393. Indemnification of rehabilitator, liquidator, and employees. (1) If any legal action is commenced against the rehabilitator or liquidator or any employee of the rehabilitator or liquidator, whether against the rehabilitator, liquidator, or employee personally or in an official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the rehabilitator, liquidator, or employee arising out of or by reason of duties or employment, the rehabilitator, liquidator, or employee is indemnified from the assets of the insurer for all expenses, attorney fees, judgments, settlements, decrees, surety bond premiums, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the rehabilitator, liquidator, or employee that gave rise to the claim did not arise out of or by reason of the rehabilitator's, liquidator's, or employee's duties or employment or was caused by intentional or willful and wanton misconduct.

(2) Attorney fees and related expenses incurred in defending a legal action for which indemnity is available under this section must be paid from the assets of the insurer, as the expenses are incurred and in advance of the final disposition of the action, upon receipt of an undertaking by or on behalf of the rehabilitator, liquidator, or employee to repay the attorney fees and expenses. If, upon a final adjudication on the merits, it is determined that the rehabilitator, liquidator, or employee is not entitled to indemnity under this section, the payment must be made from the undertaking.

(3) An indemnification for expenses, attorney fees, judgments, settlements, decrees, surety bond premiums, or other amounts paid or to be paid from the insurer's assets pursuant to this section are an administrative expense of the insurer.

(4) If actual or threatened litigation against a rehabilitator, liquidator, or employee for which indemnity may be available under this section occurs, a reasonable amount of funds that in the judgment of the commissioner may be needed to provide indemnity must be segregated and reserved from the assets of the insurer as security for the payment of indemnity until all applicable statutes of limitation have run, all actual or threatened actions against the rehabilitator, liquidator, or employee have been completely and finally resolved, and all obligations of the insurer and the commissioner under this section have been satisfied.

(5) In lieu of segregation and reservation of funds, the commissioner may obtain a surety bond or make other arrangements that will enable the commissioner to fully secure the payment of all obligations under this section.

History: **En. Sec. 37, Ch. 596, L. 1993.**

33-2-1394. Settlement of actions against rehabilitator, liquidator, and employees — court approval — applicability. (1) If any legal action against an employee for which indemnity may be available under this section is settled prior to final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee or indemnify the employee for the settlement amount unless the commissioner determines:

(a) that the claim did not arise out of or by reason of the employee's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the employee.

(2) In a legal action in which the rehabilitator or liquidator is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the rehabilitator or liquidator is subject to the approval of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

(a) that the claim did not arise out of or by reason of the rehabilitator's or liquidator's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the rehabilitator or liquidator.

(3) This section may not be construed to deprive the rehabilitator, liquidator, or employee of immunity, indemnity, benefit of law, right, or defense available under any provision of law, including, without limitation, the provisions of Title 2, chapter 9.

(4) (a) Except as otherwise provided, a legal action by a third party does not lie against the rehabilitator, liquidator, or employee based in whole or in part on any alleged act, error, or omission that took place prior to October 1, 1993, unless suit is filed and valid service of process is obtained by October 1, 1994. A legal action that is pending on or filed after September 30, 1993, by a liquidator or a liquidation estate will lie against a former special deputy liquidator or any employee, agent, or independent contractor retained by a special deputy liquidator without regard to when the alleged act, error, or omission occurred.

(b) Subsections (1) through (3) apply to any suit that is pending on or filed after October 1, 1993, without regard to when the alleged act, error, or omission took place.

History: En. Sec. 38, Ch. 596, L. 1993; amd. Sec. 31, Ch. 379, L. 1995.

Part 14 reserved

Part 15

Regulation of Controlled Insurers and Controlling Producers

33-2-1501. Definitions. As used in parts 15 through 17 of this chapter, the following definitions apply:

(1) "Accredited state" means a state in which the department of insurance or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

(2) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(3) "Captive insurer" means:

(a) an insurer that is owned by another entity and whose exclusive purpose is to insure risks of the parent entity and its affiliates; or

(b) in the case of a group or association, an insurer that is owned by the member insureds and whose exclusive purpose is to insure risks to member insureds and their affiliates.

(4) "Control" or "controlled" has the meaning defined in 33-2-1101.

(5) "Controlled insurer" means an authorized insurer that is controlled, directly or indirectly, by a producer.

(6) "Controlling person" means a person, firm, association, or corporation that has the power to direct or cause to be directed the management, control, or activities of a reinsurance intermediary.

(7) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(8) (a) "Insurer" means any person, firm, association, or corporation authorized, under Title 33, chapter 2, part 1, to transact insurance business in this state.

(b) The following are not insurers:

(i) risk retention groups as defined in:

(A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

(B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or

(C) Title 33, chapter 11, part 1;

(ii) residual market pools and joint underwriting authorities or associations; or

(iii) captive insurers.

(9) "Licensed producer" means a producer or reinsurance intermediary licensed pursuant to this title.

(10) (a) "Managing general agent" means a person who:

(i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;

(ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and

(iii) engages in one or more of the following activities on the business produced:

(A) adjustment or payment of claims in excess of an amount determined by the commissioner; or

(B) negotiation of reinsurance on behalf of the insurer.

(b) Notwithstanding the provisions of subsection (10)(a), the following persons are not considered managing general agents:

(i) an employee of the insurer;

(ii) a manager of the United States branch of an alien insurer;

(iii) an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based solely on the value of premiums written; or

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an interinsurance exchange under powers of attorney.

(11) "NAIC" means the national association of insurance commissioners.

(12) "Producer" means an insurance producer or reinsurance intermediary authorized or licensed pursuant to this title.

(13) (a) "Qualified United States financial institution" means a financial institution that:

(i) is organized or licensed under the laws of the United States or any state;

(ii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies and that either:

(A) is determined by the commissioner to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the commissioner; or

(B) is eligible to act as a fiduciary of a trust or has been granted authority to operate with fiduciary powers.

(b) For purposes of this definition, the commissioner may by rule adopt standards of financial condition and standing that may be developed from time to time by the securities valuation office of the NAIC.

(14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(15) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(16) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager, or other similar term.

(b) The following persons are not considered reinsurance intermediary-managers with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based on the volume of premiums written; or

(iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with authority to assume reinsurance.

(18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

History: En. Sec. 1, Ch. 596, L. 1993.

33-2-1502. Filing requirements. (1) Each domestic, foreign, and alien insurer authorized to transact insurance in this state shall, on or before March 1 of each year, file with the NAIC a copy of its annual statement convention form, along with any additional filings for the preceding year as prescribed by the commissioner. The information filed with the NAIC must be in the same format and scope as that required by the commissioner and must include the signed jurat page and the actuarial certification. Amendments to the annual statement filing that are subsequently filed with the commissioner must also be filed with the NAIC.

(2) Foreign insurers domiciled in a state that has a law substantially similar to this section are considered to be in compliance with this section.

History: En. Sec. 2, Ch. 596, L. 1993.

33-2-1503. Immunity of NAIC. In the absence of actual malice, members of the NAIC; their authorized committees, subcommittees, task forces, delegates, and employees; and all others charged with the responsibility of collecting and processing the information developed from the filing of the annual statement convention forms are considered to act under the authority of 33-2-1502 through 33-2-1504. They are not subject to civil liability for libel, slander, or any other cause of action arising from their collection, review, analysis, or dissemination of information collected from the filings required by 33-1-408 through 33-1-410, 33-2-1216 through 33-2-1218, 33-2-1391 through 33-2-1394, Title 33, chapter 2, parts 15 through 17, and 33-11-110.

History: En. Sec. 3, Ch. 596, L. 1993.

33-2-1504. Confidentiality. All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the department by the NAIC insurance regulatory information systems are confidential and may not be disclosed by the department.

History: **En. Sec. 4, Ch. 596, L. 1993.**

33-2-1505 through 33-2-1508 reserved.

33-2-1509. Applicability of minimum standards. (1) The provisions of 33-2-1510 apply if, in any calendar year, the aggregate amount of gross written premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding the provisions of subsection (1), the provisions of 33-2-1510 do not apply if:

(a) the controlling producer:

(i) does not receive compensation based upon the amount of premiums written in connection with the insurance and places insurance only with:

(A) the controlled insurer; or

(B) the controlled insurer and a member or members of the controlled insurer's holding company system or the controlled insurer's parent, affiliate, or subsidiary; and

(ii) accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

(b) except for insurance business written through a residual market facility, the controlled insurer accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

History: **En. Sec. 5, Ch. 596, L. 1993.**

33-2-1510. Minimum standards. Unless there is a written contract between a controlling producer and a controlled insurer specifying the responsibilities of each party, the controlled insurer may not accept business from the controlling producer and the controlling producer may not place business with the controlled insurer. The contract must be approved by the board of directors of the controlled insurer and must contain the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(2) The controlling producer shall render to the controlled insurer accounts detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the controlling producer.

(3) On at least a monthly basis, the controlling producer shall remit to the controlled insurer all funds due under the terms of the contract. The due date must be fixed so that premiums or installments of premiums collected must be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract.

(4) In accordance with the provisions of this title, all funds collected for the controlled insurer's account must be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system. However, funds of a controlling producer not required to be licensed in this state must be maintained in compliance with the requirements of the jurisdiction in which the controlling producer is domiciled.

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(6) The contract may not be assigned in whole or in part by the controlling producer.

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules, procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(8) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes of those commissions, charges, or fees must be contained in the contract. The rates of the controlling producer's commissions, charges, and other fees may not be greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of subsection (7) and this subsection, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(9) If the contract provides that on insurance business placed with the controlled insurer, the controlling producer is to be compensated contingent upon the controlled insurer's profits on that business, then the compensation may not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. The commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to 33-2-1512.

(10) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings must be contained in the contract. The controlled insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and may not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(11) The controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business that the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines. For reinsurance assumed and ceded, the guidelines must include a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

History: En. Sec. 6, Ch. 596, L. 1993; amd. Sec. 32, Ch. 379, L. 1995.

33-2-1511. Audit committee. Each controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually review the adequacy of the controlled insurer's loss reserves and meet with management, the controlled insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner.

History: En. Sec. 7, Ch. 596, L. 1993.

33-2-1512. Annual report by independent actuary. In addition to any other required loss reserve certification, the controlled insurer shall, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner. The opinion must report the loss ratios for each line of business written and must attest to the adequacy of loss reserves established for losses incurred and outstanding as of the yearend, including losses incurred but not reported, on business placed by the producer.

History: En. Sec. 8, Ch. 596, L. 1993.

33-2-1513. Annual report to commissioner. The controlled insurer shall annually report to the commissioner:

(1) the amount of commissions paid to the producer;

(2) the percentage the amount represents of the net premiums written; and

(3) comparable amounts and the percentage paid to noncontrolling producers for placements of the same kinds of insurance.

History: En. Sec. 9, Ch. 596, L. 1993.

33-2-1514. Disclosure. (1) Except as provided in subsection (2), the producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured, disclosing the relationship between the producer and the controlled insurer.

(2) If the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the controlling producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the controlled insurer and the producer and that the subproducer has notified or will notify the insured.

History: En. Sec. 10, Ch. 596, L. 1993.

33-2-1515. Penalties. (1) (a) If the commissioner believes that a controlling producer or any other person has not materially complied with 33-2-1509 through 33-2-1514 or any regulation or order promulgated under 33-2-1509 through 33-2-1514, the commissioner, after notice and opportunity to be heard, may order the controlling producer to cease placing business with the controlled insurer.

(b) If it is found that because of the material noncompliance with 33-2-1509 through 33-2-1514, the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the controlled insurer or policyholder for recovery of compensatory damages for the benefit of the controlled insurer or policyholder or other appropriate relief.

(2) The receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer if:

(a) an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Title 33, chapter 2, part 13;

(b) the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with 33-2-1509 through 33-2-1514 or any regulation or order promulgated under 33-2-1509 through 33-2-1514; and

(c) the controlled insurer suffered any loss or damage from the noncompliance.

(3) This section does not affect the right of the commissioner to impose any other penalties provided for in this title.

(4) This section may not be construed to alter or affect the rights of policyholders, claimants, creditors, or other third parties.

History: En. Sec. 11, Ch. 596, L. 1993.

33-2-1516. Compliance — applicability. (1) Controlled insurers and controlling producers who are not in compliance with 33-2-1510 on October 1, 1993, have 60 days to come into compliance and shall comply with 33-2-1514 in all policies written or renewed on or after December 1, 1993.

(2) Sections 33-2-1509 through 33-2-1514 apply to insurers that are domiciled in this state or domiciled in a state that is not an accredited state that has in effect a substantially similar law.

(3) The provisions of Title 33, chapter 2, part 11, to the extent they are not superseded by 33-2-1509 through 33-2-1514, continue to apply to all entities within holding company systems subject to 33-2-1509 through 33-2-1514.

(4) An insurer may not continue to use the services of a managing general agent after December 1, 1993, unless the use complies with part 16 of this chapter.

(5) An insurer or reinsurer may not continue to use the services of a reinsurance intermediary after December 1, 1993, unless the use complies with part 17 of this chapter.

History: En. Sec. 12, Ch. 596, L. 1993.

33-2-1517. Rulemaking authority. (1) The commissioner may adopt rules implementing the provisions of 33-1-408 through 33-1-410, 33-2-1216 through 33-2-1218, 33-2-1391 through 33-2-1394, Title 33, chapter 2, parts 15 through 17, and 33-11-110.

(2) The authority of the commissioner to adopt rules is specifically extended, without limitation, to establish standards for companies considered to be in hazardous financial condition, to require annual audited financial reports, to regulate life and health reinsurance agreements, to provide for reports to the commissioner by holding company systems, and to establish accounting practices and procedures to be used by insurers in their annual statements.

History: En. Sec. 13, Ch. 596, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 16

Regulation of Managing General Agents

Part Cross-References

Agency, Title 28, ch. 10.

33-2-1601. Licensure of managing general agent. (1) A person, firm, association, or corporation may not act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

(2) A person, firm, association, or corporation may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of this part.

(3) The commissioner may require a bond in an amount acceptable to the commissioner for the protection of the insurer.

(4) The commissioner may require the managing general agent to maintain a policy on errors and omissions.

History: En. Sec. 14, Ch. 596, L. 1993.

33-2-1602. Managing general agent — required contract provisions. A person acting in the capacity of a managing general agent may not place business with an insurer unless there is in force a written contract between the parties that sets forth the responsibilities of each party. Whenever both parties share responsibility for a particular function, the written contract must specify the division of responsibilities. The contract must provide at least the following:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority

of the managing general agent during the pendency of any dispute regarding the cause for termination.

(2) The managing general agent shall render accounts to the insurer, detailing all transactions, and shall remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) All funds collected for the account of an insurer must be held by the managing general agent in a fiduciary capacity in a bank that is a member of the federal reserve system. This account must be used for all payments on behalf of the insurer. The managing general agent may not retain more than 3 months' estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent must be maintained. The insurer has access to and may copy all accounts and records that are related to its business, in a form usable by the insurer. The commissioner has access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. The records must be retained pursuant to 33-3-401.

(5) The contract may not be assigned in whole or in part by the managing general agent.

(6) The contract must contain appropriate underwriting guidelines, including:

(a) the maximum annual premium volume;

(b) the basis of the rates to be charged;

(c) the types of risks that may be written;

(d) maximum limits of liability;

(e) any applicable exclusions;

(f) the territorial limitations;

(g) policy cancellation provisions; and

(h) the maximum policy period.

(7) The insurer may cancel or decline to renew any policy of insurance, as provided by law.

(8) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) all claims must be reported to the company in a timely manner;

(b) a copy of the claims file must be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed an amount determined by the commissioner or actually exceeds the limit set by the company, whichever is less;

(ii) involves a coverage dispute;

(iii) may exceed the managing general agent's claims settlement authority;

(iv) is open for more than 6 months; or

(v) is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less;

(c) all claims files are the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files become the sole property of the insurer or its estate. The managing general agent has reasonable access to and may copy the files on a timely basis.

(d) any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(9) When electronic claims files are in existence, the contract must address the timely transmission of the data.

(10) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits, whether by establishing loss reserves or controlling claim payments or in any other manner, interim profits may not be paid to the managing general agent until:

(a) 1 year after they are earned for property insurance business;

(b) 5 years after they are earned on casualty business; and

(c) the profits have been verified.

(11) The managing general agent may not:

(a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines, including for reinsurance assumed and ceded:

(i) a list of reinsurers with which automatic agreements are in effect;

(ii) the coverages and amounts or percentages that may be reinsured; and

(iii) commission schedules;

(b) commit the insurer to participate in insurance or reinsurance syndicates;

(c) appoint any producer without ensuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;

(d) without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which may not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(e) collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without the prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer.

(f) permit its subproducer to serve on the insurer's board of directors;

(g) jointly employ an individual who is employed with the insurer; or

(h) appoint a submanaging general agent.

History: En. Sec. 15, Ch. 596, L. 1993.

33-2-1603. Duties of insurers. (1) The insurer must have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which it has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(3) At least semiannually, the insurer shall conduct an onsite review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates rests with an officer of the insurer who is not affiliated with the managing general agent.

(5) Within 30 days of entering into or termination of a contract with a managing general agent, the insurer shall provide the commissioner with written notification of the appointment or termination. Notices of appointment of a managing general agent must include a statement of duties that the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(6) An insurer shall review its books and records each quarter to determine if any producer has become a managing general agent. If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify

the producer and the commissioner of the determination and the insurer and the producer shall comply with this part within 30 days.

(7) An insurer may not appoint to its board of directors an officer, director, employee, subproducer, or controlling shareholder of its managing general agent. This subsection does not apply to relationships governed by Title 33, chapter 2, part 11, or 33-2-1509 through 33-2-1514.

History: **En. Sec. 16, Ch. 596, L. 1993.**

33-2-1604. Examination authority. The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

History: **En. Sec. 17, Ch. 596, L. 1993.**

33-2-1605. Penalties and liabilities. (1) If, after a hearing conducted in accordance with Title 33, chapter 1, part 7, the commissioner finds that a person has violated any provision of this part, the commissioner may order:

(a) a penalty in an amount of $5,000 for each separate violation;

(b) revocation or suspension of the producer's license; and

(c) the managing general agent to reimburse the insurer, the rehabilitator, or a liquidator of the insurer for any losses incurred by the insurer caused by a violation of this part committed by the managing general agent.

(2) An order of the commissioner pursuant to subsection (1) is subject to judicial review pursuant to 33-1-711.

(3) This section does not limit the power of the commissioner to impose any other penalty provided in this title.

(4) This part does not limit the rights of policyholders, claimants, or creditors.

History: **En. Sec. 18, Ch. 596, L. 1993; amd. Sec. 33, Ch. 379, L. 1995.**

Part 17

Regulation of Reinsurance Intermediaries

33-2-1701. Licensure of reinsurance intermediaries. (1) A person, firm, association, or corporation may not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office directly, as a member or employee of a firm or association, or as an officer, director, or employee of a corporation:

(a) in this state, unless the reinsurance intermediary-broker is a licensed producer in this state; or

(b) in another state, unless the reinsurance intermediary-broker is a licensed producer in this state or another state that has a law substantially similar to this law or unless the reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:

(a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state;

(b) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state; or

(c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state that has a law substantially similar to this law or unless the person is licensed in this state as a nonresident insurance intermediary.

(3) Subject to subsection (2), the commissioner may require a reinsurance intermediary-manager to:

(a) file a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) maintain a policy on errors and omissions in an amount acceptable to the commissioner.

(4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this part. A license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license. All authorized persons must be named in the application and in any supplements to the application. A license issued to a corporation must authorize all of the officers and any designated employees and directors to act as reinsurance intermediaries on behalf of the corporation. All authorized persons must be named in the application and in any supplements to the application.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as the agent for service of process in the manner provided for by this title for designation of service of process upon unauthorized insurers. The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of each change in its designated agent for service of process, and the change may not become effective until acknowledged by the commissioner.

(5) (a) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment:

(i) the applicant, a person named on the application, or a member, principal, officer, or director of the applicant is not trustworthy;

(ii) a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary; or

(iii) any of the persons listed in subsection (5)(a)(i) or (5)(a)(ii) has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

(b) Upon written request, the commissioner shall furnish a summary of the basis for refusal to issue a license.

(6) Licensed attorneys of this state, when acting in their professional capacity, are exempt from this section.

History: En. Sec. 19, Ch. 596, L. 1993; amd. Sec. 8, Ch. 416, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 416 deleted former second sentence in (5)(b) that read: "The document is privileged and is not subject to public disclosure under Title 2, chapter 6, part 1." Amendment effective October 1, 1999.

33-2-1702. Required contract provisions — reinsurance intermediary-brokers. Transactions between a reinsurance intermediary-broker and the insurer it represents must be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization must, at a minimum, contain the following provisions:

(1) The insurer may terminate the reinsurance intermediary-broker's authority at any time.

(2) The reinsurance intermediary-broker shall render to the insurer accounts accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the

reinsurance intermediary-broker. The reinsurance intermediary-broker shall remit all funds due to the insurer within 30 days of receipt.

(3) All funds collected for the insurer's account must be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank that is a qualified United States financial institution.

(4) The reinsurance intermediary-broker shall comply with the requirements of 33-2-1703.

(5) The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

History: En. Sec. 20, Ch. 596, L. 1993.

33-2-1703. Books and records — reinsurance intermediary-brokers. (1) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction, showing:

(a) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

(b) the period of coverage, including the effective and expiration dates, cancellation provisions, and notice required for cancellation;

(c) the reporting and settlement requirements of balances;

(d) the rate used to compute the reinsurance premium;

(e) the names and addresses of assuming reinsurers;

(f) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

(g) any related correspondence and memorandums;

(h) the proof of placement;

(i) the details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of the party making the retrocession and the percentage of each contract assumed or ceded;

(j) the financial records, including but not limited to premium and loss accounts; and

(k) when the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(2) The insurer has access to and may copy and audit all accounts and records maintained by the reinsurance intermediary-broker that are related to the insurer's business, in a form usable by the insurer.

History: En. Sec. 21, Ch. 596, L. 1993.

33-2-1704. Duties of insurers utilizing the services of a reinsurance intermediary-broker. (1) An insurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by 33-2-1701.

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business unless the reinsurance intermediary-broker is under common control with the insurer and is subject to the provisions of Title 33, chapter 2, part 11.

(3) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

History: **En. Sec. 22, Ch. 596, L. 1993.**

33-2-1705. Required contract provisions — reinsurance intermediary-managers. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract specifying the responsibilities of each party. The contract must be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through a producer, a true copy of the approved contract must be filed with the commissioner for approval. The contract must, at a minimum, include the following provisions:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owed to the reinsurance intermediary-manager, and shall remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the reinsurer's account will be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank that is a qualified United States financial institution. The reinsurance intermediary-manager may not retain more than 3 months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

(a) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

(b) the period of coverage, including effective and expiration dates, cancellation provisions, notice required for cancellation, and disposition of outstanding reserves on covered risks;

(c) the reporting and settlement requirements of balances;

(d) the rate used to compute the reinsurance premium;

(e) the names and addresses of reinsurers;

(f) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(g) related correspondence and memorandums;

(h) proof of placement;

(i) details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by 33-2-1707, including the identity of persons making the retrocessions and the percentage of each contract assumed or ceded;

(j) financial records, including but not limited to premium and loss accounts; and

(k) when the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access to and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

(6) The contract may not be assigned in whole or in part by the reinsurance intermediary-manager.

(7) The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The rates, terms, and purposes of commissions, charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer must be set forth.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(a) all claims must be reported to the reinsurer in a timely manner;

(b) a copy of the claim file must be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) involves a coverage dispute;

(iii) may exceed the reinsurance intermediary-manager's claims settlement authority;

(iv) is open for more than 6 months; or

(v) is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(c) all claim files must be the joint property of the reinsurer and the reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer, the files become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager must have reasonable access to and the right to copy the files on a timely basis.

(d) any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, the interim profits may not be paid until:

(a) 1 year after the end of each underwriting period for property business;

(b) 5 years after the end of each underwriting period for casualty business;

(c) a later period set by the commissioner for specified lines of insurance; and

(d) the adequacy of reserves on remaining claims has been verified pursuant to 33-2-1707.

(11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall, at least semiannually, conduct an onsite review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to the contract.

(14) Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary-manager are considered to be the acts of the reinsurer on whose behalf it is acting.

History: **En. Sec. 23, Ch. 596, L. 1993.**

33-2-1706. Prohibited acts. A reinsurance intermediary-manager may not:

(1) bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for retrocessions. The guidelines must include a list of reinsurers with which automatic agreements are in effect and, for each reinsurer, must include the coverages, amounts of percentages that may be reinsured, and commission schedules.

(2) commit the reinsurer to participate in reinsurance syndicates;

(3) appoint any producer without ensuring that the producer is licensed to transact the type of reinsurance for which the producer is appointed;

(4) without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

(5) collect any payment from a party making a retrocession, or commit the reinsurer to any claim settlement with a party making a retrocession, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(6) jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to Title 33, chapter 2, part 11;

(7) appoint a subreinsurance intermediary-manager.

History: **En. Sec. 24, Ch. 596, L. 1993.**

33-2-1707. Duties of reinsurers using services of reinsurance intermediary-manager. (1) A reinsurer may not engage the services of any person, firm, association, or corporation as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by 33-2-1701.

(2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager that the reinsurer has engaged, prepared by an independent certified accountant, in a form acceptable to the commissioner.

(3) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. The opinion is in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates must rest with an officer of the reinsurer who may not be affiliated with the reinsurance intermediary-manager.

(5) Within 30 days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

(6) A reinsurer may not appoint to its board of directors any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by Title 33, chapter 2, part 11, or, if applicable, 33-2-1701 through 33-2-1705.

History: **En. Sec. 25, Ch. 596, L. 1993.**

33-2-1708. Examination authority. (1) A reinsurance intermediary is subject to examination by the commissioner. The commissioner must have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

(2) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

History: En. Sec. 26, Ch. 596, L. 1993.

33-2-1709. Penalties and liabilities. (1) (a) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with Title 33, chapter 1, part 7, to be in violation of any provision of 33-2-1701 through 33-2-1708:

(i) shall, for each separate violation, pay a penalty in an amount not to exceed $5,000; and

(ii) is subject to revocation or suspension of its license.

(b) If a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(2) The order of the commissioner pursuant to subsection (1) is subject to judicial review pursuant to Title 33, chapter 1, part 7.

(3) This section does not limit the authority of the commissioner to impose any other penalties provided in the insurance law.

(4) Sections 33-2-1701 through 33-2-1708 do not limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights upon those persons.

History: En. Sec. 27, Ch. 596, L. 1993.

Part 18 reserved

Part 19

Risk-Based Capital for Insurers

33-2-1901. Short title. This part constitutes and may be referred to as "The Risk-Based Capital for Insurers Act".

History: En. Sec. 82, Ch. 379, L. 1995.

33-2-1902. Definitions. As used in this part, the following definitions apply:

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with 33-2-1903(5).

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(3) "Domestic insurer" means any insurance company domiciled in this state.

(4) "Foreign insurer" means any insurance company licensed to do business in this state under 33-2-116 but not domiciled in this state.

(5) "Life or disability insurer" means:

(a) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of disability insurance, as described in 33-1-207, or life insurance, as described in 33-1-208;

(b) a licensed property and casualty insurer writing only disability insurance; or

(c) any insurer engaged solely in the business of reinsurance of life or disability contracts.

(6) "NAIC" means the national association of insurance commissioners.

(7) "Negative trend" means, with respect to a life or health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

(8) (a) "Property and casualty insurer" means:

(i) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of property insurance, as described in 33-1-210, or casualty insurance, as described in 33-1-206;

(ii) any insurance company engaged solely in the business of reinsurance of property and casualty contracts; or

(iii) any insurance company engaged in the business of surety and marine insurance.

(b) The term does not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

(9) "RBC instructions" means the RBC report, including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(10) "RBC level" means an insurer's authorized control level RBC, company action level RBC, mandatory control level RBC, or regulatory action level RBC, where:

(a) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(b) "company action level RBC" means, with respect to any insurer, the product of 2 and its authorized control level RBC;

(c) "mandatory control level RBC" means the product of 0.70 and the authorized control level RBC; and

(d) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC.

(11) "RBC plan" means a comprehensive financial plan containing the elements specified in 33-2-1904(2). If the commissioner rejects the RBC plan and it is revised by the insurer, with or without the commissioner's recommendation, the plan must be called a revised RBC plan.

(12) "RBC report" means the report required in 33-2-1903.

(13) "Total adjusted capital" means the sum of:

(a) an insurer's statutory capital and surplus; and

(b) other items, if any, as the RBC instructions may provide.

History: En. Sec. 83, Ch. 379, L. 1995; amd. Sec. 11, Ch. 531, L. 1997.

33-2-1903. RBC reports. (1) Each domestic insurer shall, on or before each March 1 filing date, prepare and submit to the commissioner a report of its RBC levels as of the end of the previous calendar year in a form and containing information as required by the RBC instructions. In addition, each domestic insurer shall file its RBC report:

(a) with the NAIC in accordance with the RBC instructions; and

(b) with the insurance commissioner in any state in which the insurer is authorized to do business if that insurance commissioner has notified the insurer of the request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) 15 days from the receipt of notice to file its RBC report with that state; or

(ii) the March 1 filing date.

(2) A life and disability insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must take into account and may adjust for the covariance between:

(a) the risk with respect to the insurer's assets;

(b) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) the interest rate risk with respect to the insurer's business; and

(d) all other business risks and other relevant risks as are set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) A property and casualty insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) asset risk;

(b) credit risk;

(c) underwriting risk; and

(d) all other business risks and other relevant risks that are set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the risk-based capital requirements contained in this part and the formulas, schedules, and instructions referenced in 33-2-1906 through 33-2-1913 is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this part. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this part.

(5) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. An RBC report so adjusted is referred to as an adjusted RBC report.

History: En. Sec. 84, Ch. 379, L. 1995.

33-2-1904. Company action level event. (1) "Company action level event" means any of the following events:

(a) the filing of an RBC report by an insurer which indicates that:

(i) the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(ii) for a life or disability insurer, the insurer has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and that has a negative trend;

(b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under 33-2-1908 or if the commissioner has rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that must:

(a) identify the conditions that contribute to the company action level event;

(b) contain proposals of corrective actions that the insurer intends to take and that would be expected to result in the elimination of the company action level event;

(c) provide projections of the insurer's financial results in the current year and at least the next 4 years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(d) identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) identify the quality of and problems associated with the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan must be submitted:

(a) within 45 days of the company action level event; or

(b) if the insurer challenges an adjusted RBC report pursuant to 33-2-1908, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within 60 days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer as to whether the RBC plan may be implemented or is unsatisfactory in the judgment of the commissioner. If the commissioner determines that the RBC plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may set forth proposed revisions that will render the RBC plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) within 45 days after the notification from the commissioner; or

(b) if the insurer challenges the notification from the commissioner under 33-2-1908, within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, at the commissioner's discretion, subject to the insurer's right to a hearing under 33-2-1908, specify in the notification that the notification constitutes a regulatory action level event.

(6) Each domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) the state has an RBC provision substantially similar to 33-2-1909(1); and

(b) the insurance commissioner of that state has notified the insurer in writing of its request for the filing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state by the later of:

(i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with that state; or

(ii) the date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4).

History: **En. Sec. 85, Ch. 379, L. 1995.**

33-2-1905. Regulatory action level event. (1) "Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) the filing of an RBC report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) the notification by the commissioner to an insurer of an adjusted RBC report that indicates the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under 33-2-1908 or the commissioner rejects the insurer's challenge;

(c) the failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within 10 days after the filing date;

(d) the failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in 33-2-1904(3);

(e) notification by the commissioner to the insurer that:

(i) the RBC plan or revised RBC plan submitted by the insurer is unsatisfactory in the judgment of the commissioner; and

(ii) the notification constitutes a regulatory action level event with respect to the insurer if the insurer has not challenged the determination under 33-2-1908;

(f) if, pursuant to 33-2-1908, the insurer challenges a determination by the commissioner, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge;

(g) notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification and if the insurer has not challenged the determination under 33-2-1908 or the commissioner has not rejected the insurer's challenge.

(2) In the event of a regulatory action level event, the commissioner shall:

(a) require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) perform an examination or analysis as the commissioner considers necessary of the assets, liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) subsequent to the examination or analysis, issue a corrective order specifying corrective actions that the commissioner determines are required.

(3) In determining corrective actions, the commissioner may take into account factors considered relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including but not limited to the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan must be submitted:

(a) within 45 days after the occurrence of the regulatory action level event;

(b) if the insurer challenges an adjusted RBC report pursuant to 33-2-1908 and the challenge is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) if the insurer challenges a revised RBC plan pursuant to 33-2-1908 and the challenge is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants that may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC plan, to examine or analyze the assets, liabilities, and operations of the insurer, and to formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants must

be borne by the affected insurer or such other party as directed by the commissioner.

History: **En. Sec. 86, Ch. 379, L. 1995.**

33-2-1906. Authorized control level event. (1) "Authorized control level event" means any of the following events:

(a) the filing of an RBC report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under 33-2-1908 or the commissioner rejects the insurer's challenge;

(c) the failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order if the insurer has not challenged the corrective order under 33-2-1908; or

(d) if the insurer has challenged a corrective order under 33-2-1908 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(a) take the actions required under 33-2-1905 regarding an insurer with respect to which a regulatory action level event has occurred; or

(b) if the commissioner considers it to be in the best interests of the policyholders and creditors of the insurer and of the public, take the actions necessary to cause the insurer to be placed under regulatory control under Title 33, chapter 2, part 13. In the event that the commissioner places the insurer under regulatory control, the authorized control level event must be considered sufficient grounds for the commissioner to take action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. In the event that the commissioner takes an action under this subsection pursuant to an adjusted RBC report, the insurer is entitled to the protections afforded to insurers under the provisions of 33-2-1321 through 33-2-1323 pertaining to summary proceedings.

History: **En. Sec. 87, Ch. 379, L. 1995.**

33-2-1907. Mandatory control level event. (1) "Mandatory control level event" means any of the following events:

(a) the filing of an RBC report that indicates that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under 33-2-1908 or the commissioner rejects the insurer's challenge.

(2) In the event of a mandatory control level event:

(a) with respect to a life insurer, the commissioner shall take the actions that are necessary to place the insurer under regulatory control under Title 33, chapter 2, part 13. In that event, the mandatory control level event must be considered sufficient grounds for the commissioner to take action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. If the commissioner takes an action pursuant to an adjusted RBC report, the insurer is entitled to the protections of 33-2-1321 through 33-2-1323 pertaining to summary proceedings.

Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds that there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

(b) with respect to a property and casualty insurer, the commissioner shall take the actions necessary to place the insurer under regulatory control under Title 33, chapter 2, part 13, or, in the case of an insurer that is not writing business and that is running-off its existing business, may allow the insurer to continue its runoff under the supervision of the commissioner. In either event, the mandatory control level event must be considered sufficient grounds for the commissioner to take action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. If the commissioner takes an action pursuant to an adjusted RBC report, the insurer is entitled to the protections of 33-2-1321 through 33-2-1323 pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

History: En. Sec. 88, Ch. 379, L. 1995.

33-2-1908. Notification and hearing. (1) An insurer has the right to a hearing before the department upon notification by the commissioner:

(a) of an adjusted RBC report or unsatisfactory RBC plan or revised RBC plan that constitutes a regulatory action level event with respect to the insurer;

(b) that the insurer has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(c) of a corrective order with respect to the insurer.

(2) The insurer shall notify the commissioner of its request for a hearing within 5 days after the notification by the commissioner under subsection (1). Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which may not be less than 10 or more than 30 days after the date of the insurer's request.

History: En. Sec. 89, Ch. 379, L. 1995.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

33-2-1909. Confidentiality — prohibition on announcements — prohibition on use in ratemaking. (1) With respect to a domestic insurer or a foreign insurer, all RBC reports, to the extent the information in the reports is not required to be set forth in a publicly available annual statement schedule, and all RBC plans, including the results or report of any examination or analysis of an insurer performed pursuant to this part and any corrective order issued by the commissioner pursuant to the examination or analysis, that are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors and must be kept confidential by the commissioner. This information may not be made public and is not subject to subpoena other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this part or any other provision of the insurance laws of this state.

(2) It is the intent of the legislature that the comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer and that it is not

intended as a means to rank insurers generally. Except as otherwise required under the provisions of 33-2-1911 through 33-2-1913, the making, publishing, disseminating, circulating, or placing before the public or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any insurer or of any component derived in the calculation that is by any insurer, producer, or other person engaged in any manner in the insurance business would be misleading and is prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels or an inappropriate comparison of any other amount to the insurer's RBC levels is published in any written publication and the insurer is able to demonstrate to the commissioner, with substantial proof, the falsity of the statement or the inappropriateness, as the case may be, the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) It is the further intent of the legislature that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and may not be used by the commissioner for ratemaking or considered or introduced as evidence in any rate proceeding or used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write.

History: En. Sec. 90, Ch. 379, L. 1995.

33-2-1910. Supplemental provisions — rules — exemption. (1) The provisions of this part are supplemental to any other provisions of the laws of this state and do not preclude or limit any other powers or duties of the commissioner under the law, including but not limited to Title 33, chapter 2, part 13.

(2) The commissioner may adopt reasonable rules necessary for the implementation of this part.

(3) The commissioner may exempt from the application of this part any domestic property and casualty insurer that:

(a) writes direct business only in this state;

(b) writes direct annual premiums of $2 million or less; and

(c) does not assume reinsurance in excess of 5% of direct premium written.

History: En. Sec. 91, Ch. 379, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-2-1911. Foreign insurers. (1) A foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report for the previous calendar year on the later of:

(a) the date that an RBC report would be required to be filed by a domestic insurer under 33-2-1903; or

(b) 15 days after the request is received by the foreign insurer.

(2) A foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(3) In the event of a company action level event, regulatory action level event, or authorized control level event, with respect to any foreign insurer as determined

under the RBC statute applicable in the state of domicile of the insurer or, if an RBC statute is not in force in that state, under the provisions of this part, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC plan in the manner specified under that state's RBC statute or, if an RBC statute is not in force in that state, under 33-2-1904, the commissioner may require the foreign insurer to file an RBC plan with the commissioner. In that event, the failure of the foreign insurer to file an RBC plan with the commissioner is grounds to order the insurer to cease and desist from writing new insurance business in this state.

(4) In the event of a mandatory control level event with respect to any foreign insurer, if a domiciliary receiver has not been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to a district court of this state permitted under 33-2-1380 with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory control level event must be considered adequate grounds for the application.

History: **En. Sec. 92, Ch. 379, L. 1995.**

33-2-1912. Applicability for 1995. (1) For RBC reports required to be filed by property and casualty insurers with respect to 1995, the following requirements apply in lieu of the provisions of 33-2-1904 through 33-2-1907:

(a) In the event of a company action level event with respect to a domestic insurer, the commissioner will not take regulatory action under this part.

(b) In the event of a regulatory action level event under 33-2-1905(1)(a), (1)(b), or (1)(c), the commissioner shall take the actions required under 33-2-1905(2) and (3).

(c) In the event of a regulatory action level event under 33-2-1905(1)(d), (1)(e), (1)(f), or (1)(g) or an authorized control level event, the commissioner shall take the actions required under 33-2-1905(2) and (3) with respect to the insurer.

(2) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under 33-2-1907.

History: **En. Sec. 93, Ch. 379, L. 1995.**

33-2-1913. Notices. All notices by the commissioner to an insurer that may result in regulatory action are effective on dispatch if transmitted by certified mail or, in the case of any other transmission, are effective on the insurer's receipt of the notice.

History: **En. Sec. 94, Ch. 379, L. 1995.**

CHAPTER 3

DOMESTIC STOCK AND MUTUAL INSURERS

Part 1 — General Provisions

33-3-101. Scope of chapter.
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Part 2 — Formation

33-3-201. Incorporation.
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Chapter Cross-References

Domestic insurers — taxation of real and personal property, Title 15, ch. 24, part 6.

Part 1

General Provisions

33-3-101. Scope of chapter. This chapter shall apply only to domestic stock insurers and domestic mutual insurers transacting or proposing to transact insurance on the cash premium or legal reserve plan, except that 33-3-414(2) and 33-3-503 shall also apply to foreign and alien insurers.

History: En. Sec. 418, Ch. 286, L. 1959; R.C.M. 1947, 40-4701.

33-3-102. Definitions. (1) A "domestic mutual insurer" is an incorporated insurer without capital stock, and the governing body of which is elected by the policyholders.

(2) A "domestic stock insurer" is an incorporated insurer with capital divided into shares and owned by its stockholders.

History: En. Secs. 419, 420, Ch. 286, L. 1959; R.C.M. 1947, 40-4702, 40-4703.

33-3-103. Applicability of general corporation statutes. (1) The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

(2) Except as provided in part 6 of this chapter, 35-1-931 through 35-1-935 apply to the voluntary dissolution of a domestic insurer.

History: En. Sec. 421, Ch. 286, L. 1959; R.C.M. 1947, 40-4704; amd. Sec. 1, Ch. 389, L. 1987; amd. Sec. 188, Ch. 368, L. 1991.

Cross-References

Business corporations, Title 35, ch. 1.

33-3-104. Extinguishment of unused corporate charters. (1) The corporate charter of any corporation formed under the laws of this state for the purpose of becoming an insurer, and which corporation during any period of 36 consecutive months after January 1, 1961, is not actively engaged in business as a domestic insurer under a certificate of authority issued to it by the commissioner under law currently in force, is automatically hereby extinguished and nullified at the expiration of such 36-month period.

(2) The period during which any such corporation referred to in subsection (1) above is the subject of delinquency proceedings under part 13, chapter 2, of this title shall not be counted as part of any such 36-month period.

History: En. Sec. 467, Ch. 286, L. 1959; R.C.M. 1947, 40-4750(2), (3); amd. Sec. 141, Ch. 575, L. 1981.

Cross-References

Certificate of authority, 33-2-101.

Part 2
Formation

33-3-201. Incorporation. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Five or more individuals, none of whom are less than 18 years of age, may incorporate a stock insurer. Ten or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

(3) The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

(a) the name of the corporation. If a mutual, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions wherein conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance therein.

(b) the duration of its existence, which may be perpetual;

(c) the kinds of insurance, as defined in this code, which the corporation is formed to transact;

(d) if a stock corporation, its authorized capital stock, the number of shares of common stock into which divided, the par value of each such share, which par value shall be at least $1. Shares without par value or other than one class of voting common stock shall not be authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, or bonds, debentures, or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings.

(e) if a stock corporation, the extent, if any, to which shares of its stock are subject to assessment;

(f) if a stock corporation, the number of shares subscribed, if any, by each incorporator;

(g) if a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. Such liability shall be stated in the articles of incorporation but shall not be less than one or more than six times the premium for the member's policy at the annual premium rate for a term of 1 year.

(h) the minimum, not less than 5, and the maximum, not more than 21, number of directors who shall constitute the board of directors and conduct the affairs of the corporation; also, the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than 1 year after the date of incorporation.

(i) the name of the county, and the city, town, or place within the county, in which its principal office or principal place of business is to be located in this state;

(j) such other provisions, not inconsistent with law, deemed appropriate by the incorporators;

(k) the name and residence address of each incorporator and the citizenship of each incorporator who is not a citizen of the United States.

History: En. Sec. 422, Ch. 286, L. 1959; amd. Sec. 7, Ch. 423, L. 1971; amd. Sec. 18, Ch. 100, L. 1973; R.C.M. 1947, 40-4705.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

33-3-202. Articles of incorporation — filing and approval. (1) The incorporators of a proposed domestic insurer shall deliver the triplicate originals of the articles of incorporation to the commissioner. The commissioner shall examine the proposed articles of incorporation. If the commissioner finds that the articles comply with this chapter and are not in conflict with the constitution and laws of the United States or of this state, the commissioner shall approve in writing each set of the articles. However, if the commissioner finds that the proposed insurer would not be eligible for a certificate of authority under 33-2-112, the commissioner shall refuse to approve the articles of incorporation and shall return them to the proposed incorporators, together with a written statement of the reasons for the refusal. The commissioner shall forward the approved articles of incorporation to the incorporators. The incorporators shall subsequently file one set of the articles of incorporation with the secretary of state and one set certified by the secretary of state with the commissioner. The remaining set of articles must be made a part of the corporation's record.

(2) If the commissioner finds that the proposed articles of incorporation do not comply with law, the commissioner shall refuse to approve the proposed articles of incorporation and shall return all sets of the proposed articles of incorporation to the proposed incorporators, together with a written statement of the reasons for the refusal.

(3) The corporation has legal existence as a corporation upon the issuance of the certificate of incorporation by the secretary of state and completion of the filing with the commissioner required in subsection (1), but the corporation may not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this title.

(4) A copy of the certificate of incorporation, certified by the secretary of state, is admissible in all the courts of this state as prima facie evidence of proper incorporation.

History: En. Sec. 423, Ch. 286, L. 1959; R.C.M. 1947, 40-4706; amd. Sec. 1, Ch. 373, L. 1983; amd. Sec. 5, Ch. 316, L. 1999; amd. Sec. 17, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 316 in (1) at end of first sentence deleted "together with the filing fees therefor specified in 33-2-708"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 472 in (1) near middle of first sentence after "deliver the" substituted "triplicate" for "quadruplicate" and near middle of sixth sentence after "one set" inserted "certified by the secretary of state" and at end deleted "bearing the certification of the secretary of state, and one set with the county clerk of the county wherein is to be located the corporation's principal place of business; and"; and made minor changes in style. Amendment effective October 1, 1999.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Cross-References

Custody of records with Secretary of State, 2-6-111.

Administrative hearing before Commissioner, 33-1-701.

33-3-203. Amendment of articles of incorporation — grounds for disapproval. (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included notice of the proposal to amend.

(2) A domestic mutual insurer may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or

represented by proxy at a lawful meeting of its members of which the notice given members included notice of the proposal to amend.

(3) Upon adoption of an amendment the insurer shall make in quadruplicate under its corporate seal a certificate (sometimes referred to as "articles of amendment") setting forth the amendment and the date and manner of the amendment's adoption. The certificate must be executed by the insurer's president or vice president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds. The insurer shall deliver to the commissioner the quadruplicate originals of the certificate. If the commissioner finds that the certificate and amendments comply with law, the commissioner shall approve in writing each of the quadruplicate originals and return them to the insurer. The insurer shall subsequently file one set of endorsed articles of amendment with the secretary of state, one set with the commissioner, bearing the certification of the secretary of state, and one set with the county clerk of the county in which the insurer's principal place of business will be located and shall retain the remaining set in the corporate records. The amendment is effective when the filings have been completed.

(4) If the commissioner finds that the proposed amendment or certificate does not comply with the law, the commissioner may not approve the amendment or certificate and shall return the quadruplicate certificate of amendment to the insurer together with a written statement of reasons for nonapproval. The filing fee is not returnable.

(5) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount then outstanding, the commissioner may not approve the amendment if the commissioner has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by the reduction. If a reduction of capital stock is effectuated, the insurer may require return of the original certificates of stock held by each stockholder for exchange for new certificates for the number of shares as the stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of the reduction.

History: En. Sec. 424, Ch. 286, L. 1959; R.C.M. 1947, 40-4707; amd. Sec. 6, Ch. 316, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 316 in (3) at end of third sentence deleted "together with the filing fee specified therefor in 33-2-708"; and made minor changes in style. Amendment effective January 1, 2000.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-204. Initial qualifications — domestic mutuals. (1) When newly organized, a domestic mutual insurer may be authorized to transact any of the kinds of insurance as are permitted under 33-2-108.

(2) When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this code and must have unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance as in 33-2-109, subject further to the additional special surplus requirements of 33-2-110 applicable to such stock insurer. The minimum amount of surplus must thereafter be maintained unimpaired and placed on deposit with the commissioner. The deposit is subject to the provisions of chapter 2, part 6, of this title and 33-2-111.

History: En. Sec. 425, Ch. 286, L. 1959; R.C.M. 1947, 40-4708; amd. Sec. 10, Ch. 303, L. 1981.

Cross-References

Application for original certificate of authority, 33-2-115.

Curing impairment of capital deficiency — any lawful means authorized, 33-3-433.

33-3-205. Formation of mutual insurer — bond. (1) Before soliciting applications for insurance to raise surplus funds to qualify for the original certificate of authority, the incorporators of the proposed insurer shall file with the commissioner a corporate surety bond in the penalty of $50,000, in favor of the state and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:

(a) for the prompt return to applicant members of all premiums collected in advance;

(b) for payment of all indebtedness of the corporation; and

(c) for payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation, all in the event the corporation fails to complete its organization and secure a certificate of authority within 1 year after the date of its certificate of incorporation.

(2) In lieu of such bond, the incorporators may deposit with the commissioner $50,000 in cash or United States government bonds, negotiable and payable to the bearer, with a market value at all times of not less than $50,000, to be held in trust upon the same conditions as required for the bond.

(3) Any such bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it.

History: En. Sec. 426, Ch. 286, L. 1959; R.C.M. 1947, 40-4709; amd. Sec. 11, Ch. 303, L. 1981.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

33-3-206. Applications for insurance in formation of mutual insurer. (1) Upon receipt of the commissioner's approval of the bond or deposit as provided in 33-3-205, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept and may receive deposits of premiums thereon.

(2) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located, or to be performed in this state.

(3) All such applications shall provide that:

(a) issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

(b) no insurance is in effect unless and until the certificate of authority has been issued; and

(c) the prepaid premium or deposit and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date, which date shall be not later than 1 year after the date of the certificate of incorporation.

(4) All qualifying premiums collected shall be in cash.

(5) Solicitation for such qualifying applicants for insurance shall be by licensed insurance producers of the corporation, and the commissioner shall, upon the corporation's application therefor, issue temporary insurance producer's licenses expiring on the date specified pursuant to subsection(3)(c) above to individuals qualified as for a resident insurance producer's license except as to the taking or passing of an examination. The commissioner may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable

to suspension or revocation of licenses of insurance producers in general under chapter 17.

History: En. Sec. 427, Ch. 286, L. 1959; R.C.M. 1947, 40-4710; amd. Sec. 1, Ch. 713, L. 1989.

33-3-207. Formation of mutuals — trust deposit of premiums — issuance of policies. (1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with 33-3-206(3)(c). The corporation shall file an executed copy of such trust agreement with the commissioner.

(2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

History: En. Sec. 428, Ch. 286, L. 1959; R.C.M. 1947, 40-4711.

Cross-References

Banks and trust companies, Title 32, ch. 1.

33-3-208. Formation of mutuals — failure to qualify. If the proposed domestic insurer fails to complete its organization and to secure its original certificate of authority within 1 year after the date of its certificate of incorporation, its corporate powers shall cease and the commissioner shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under 33-3-207.

History: En. Sec. 429, Ch. 286, L. 1959; R.C.M. 1947, 40-4712.

33-3-209 through 33-3-214 reserved.

33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under a plan and procedure approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by Title 35, chapter 1, part 8, as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 13.

History: En. Sec. 460, Ch. 286, L. 1959; R.C.M. 1947, 40-4743; amd. Sec. 13, Ch. 198, L. 1979; amd. Sec. 141, Ch. 575, L. 1981.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-216. Converting mutual insurer to stock insurer. (1) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any such plan or procedure unless:

(a) it is equitable to the insurer's members;

(b) it is subject to approval by vote of not less than three-fourths of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the commissioner. If a life insurer, right to vote may be limited to members who hold policies other than term or group policies and whose policies have been in force for not less than 1 year.

(c) the equity of each policyholder in the insurer is determinable under a fair formula approved by the commissioner, which such equity shall be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all nonadmitted assets;

(d) the policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been policyholders of the insurer within 3 years prior to the date such plan was submitted to the commissioner;

(e) the plan gives to each policyholder of the insurer, as specified in subsection (2)(d), a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under subsection (2)(c);

(f) shares are so offered to policyholders at a price not greater than to be thereafter offered to others but at not more than double the par value of such shares;

(g) the plan provides for payment to each policyholder not electing to apply his equity in the insurer for or upon the purchase price of stock to which preemptively entitled of cash in the amount of not less than 50% of the amount of his equity not so used for the purchase of stock, and which cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of such mutual insurer; and

(h) the plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amount not less than one-half of such required capital.

History: En. Sec. 461, Ch. 286, L. 1959; R.C.M. 1947, 40-4744.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-217. Mergers and consolidations of stock insurers. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit but subject to subsections (2) and (3) below.

(2) No such merger or consolidation may be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved in writing by him after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) is contrary to law;

(b) inequitable to the stockholders of any domestic insurer involved; or

(c) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) No director, officer, insurance producer, or employee of any insurer party to such merger or consolidation may receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in such plan or agreement.

(4) If the commissioner does not approve any such plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

(5) If any domestic insurer involved in the proposed merger or consolidation is authorized to transact insurance also in other states, the commissioner may request the insurance commissioner, director of insurance, superintendent of insurance, or other similar public insurance supervisory official of the two other such states in which such insurer has in force the larger amounts of insurance to participate in the hearing provided for under subsection (2) above, with full right to examine all witnesses and evidence and to offer to the commissioner such pertinent information and suggestions as they may deem proper.

(6) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for such controlling stock of the second insurer is deemed to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions hereof.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of such merged or consolidated domestic insurer shall thereby automatically be extinguished and nullified.

History: (1) thru (6)En. Sec. 462, Ch. 286, L. 1959; amd. Sec. 1, Ch. 151, L. 1971; Sec. 40-4745, R.C.M. 1947; (7)En. Sec. 467, Ch. 286, L. 1959; Sec. 40-4750, R.C.M. 1947; R.C.M. 1947, 40-4745, 40-4750(4); amd. Sec. 14, Ch. 198, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Hearings by Commissioner, 33-1-701.

Merger and consolidation of business corporations, Title 35, ch. 1, part 8.

33-3-218. Mergers and consolidations of mutual insurers. (1) A domestic mutual insurer shall not merge or consolidate with a stock insurer.

(2) A domestic mutual insurer may merge or consolidate with another mutual insurer under the applicable procedures prescribed by the statutes of this state applying to corporations formed for profit, except as hereinbelow provided.

(3) The plan and agreement for merger or consolidation shall be submitted to and approved by at least two-thirds of the members of each mutual insurer involved voting thereon at meetings called for the purpose pursuant to such reasonable notice and procedure as has been approved by the commissioner. If a life insurer, right to vote may be limited to members whose policies are other than term and group policies and have been in effect for more than 1 year.

(4) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved by him in writing after a hearing thereon. The commissioner shall give

such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) inequitable to the policyholders of any domestic insurer involved; or

(b) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

(5) If the commissioner does not approve such plan or agreement he shall so notify the insurers in writing specifying his reasons therefor.

(6) Section 33-3-217(5) shall also apply as to mergers and consolidations of such mutual insurers.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of such merged or consolidated domestic insurer shall thereby automatically be extinguished and nullified.

History: En. Secs. 463, 467, Ch. 286, L. 1959; R.C.M. 1947, 40-4746, 40-4750(4).

Cross-References

Hearings by Commissioner, 33-1-701.

Merger and consolidation of business corporations, Title 35, ch. 1, part 8.

Part 3

Management

33-3-301. Bylaws of mutual. (1) A domestic mutual insurer shall have bylaws for the governing of its affairs. The initial board of directors of the insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next succeeding meeting. The members shall have power to make, modify, and revoke bylaws.

(2) The bylaws shall provide:

(a) that each member is entitled to one vote upon each matter coming to a vote at meetings of members; or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based upon the amount of insurance in force, number of policies held or upon the amount of the premiums paid by such member, or upon other reasonable factors. A member shall have the right to vote in person or by his written proxy. No such proxy shall be made irrevocable or for longer than a reasonable period of time.

(b) for election of directors by the members and the number, qualifications, terms of office, and powers of directors;

(c) the time, notice, quorum, and conduct of annual and special meetings of members and voting thereat. The bylaws may provide that the annual meeting shall be held at a place, date, and time to be set forth in the policy and without giving other notice of such meeting.

(d) the number, designation, election, terms, and powers and duties of the respective corporate officers;

(e) for deposit, custody, disbursement, and accounting as to corporate funds;

(f) for any other reasonable provisions customary, necessary, or convenient for the management or regulation of its corporate affairs.

(3) No provision in the bylaws for determining a quorum of members at any meeting thereof of less than a majority of all the insurer's members shall be effective unless approved by the commissioner. This subsection shall not affect any other provision of law requiring vote of a larger percentage of members for a specified purpose.

(4) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The commissioner shall disapprove any bylaw provision deemed by him to be unlawful, unreasonable, inadequate, unfair, or detrimental to the proper

interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

History: **En. Sec. 432, Ch. 286, L. 1959; R.C.M. 1947, 40-4715.**

33-3-302. Bylaws of stock insurer — modification. Any bylaw so adopted at any meeting of stockholders of a domestic insurer shall not be modified or revoked except by the stockholders at a subsequent meeting unless the bylaws as adopted or amended by the stockholders grant authority to the board of directors to revoke or modify bylaw provisions; but the board of directors shall not so revoke or modify any bylaw relating to the qualifications, election, terms, or compensation of directors or to the calling or notice of meetings of stockholders. Any revocation or modification of bylaws made by the directors under this provision shall be presented at the next following meeting of stockholders for the information of the stockholders.

History: **En. Sec. 433, Ch. 286, L. 1959; R.C.M. 1947, 40-4716.**

33-3-303. Meetings of stockholders or members. (1) Meetings of stockholders or members of a domestic insurer must be held in the city or town of its principal office or place of business in this state.

(2) A meeting of stockholders or members may not amend the insurer's articles of incorporation unless the proposal to amend was included in the notice of the meeting.

(3) Except with the commissioner's consent, each insurer shall, during the first 6 months of each calendar year, hold the annual meeting of its stockholders or members to fill vacancies existing or occurring in the board of directors, must receive and shall consider reports of the insurer's officers as to its affairs, and shall transact other business properly brought before it. Not less than 20 days' notice must be given of the meeting in the manner provided in the bylaws, except when notice of the annual meeting of a mutual insurer is contained in its policies.

(4) Special meetings of the stockholders or members may be called at any time for any purpose by the board of directors upon not less than 10 days' notice, with notice given as provided in the bylaws. The notice must state the purpose of the meeting, and business for which notice was not given may not be transacted at the meeting.

(5) If more than 15 months are allowed to elapse without an annual stockholders' or members' meeting being held, any stockholder or member may call for an annual meeting to be held. At any time, upon written request of any director or of any stockholders or members holding in the aggregate one-fifth of the voting power of all stockholders or members, it is the duty of the secretary to call a special meeting of stockholders or members to be held at the time that the secretary may fix, not less than 10 or more than 30 days after the receipt of the request. If the secretary fails to issue a call, the director, stockholders, or members making the request may do so.

(6) A stockholders' or members' meeting duly held may be organized for the transaction of business whenever a quorum is present. Except as otherwise provided by law or the articles of incorporation:

(a) the presence, in person or by proxy, of the holders of a majority of the voting power of all stockholders or of all members constitutes a quorum;

(b) the stockholders or members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders or members to leave less than a quorum;

(c) if any necessary officer fails to attend a meeting, any stockholder or member present may be elected to act temporarily in lieu of the absent officer;

(d) if a meeting cannot be held because a quorum is not present, those present may adjourn the meeting to a time that they determine, but in the case of any meeting called for the election of any director, the adjournment must be to the next day and those who attend the second meeting, although less than a quorum as fixed in this section or in the articles of incorporation, constitute a quorum for the purpose of electing any director; and

(e) an annual or special meeting of stockholders or members may be adjourned to another date without new notice being given.

History: En. Sec. 434, Ch. 286, L. 1959; R.C.M. 1947, 40-4717; amd. Sec. 12, Ch. 531, L. 1997.

33-3-304. Proxies — corrupt practices — penalty. (1) Every proxy of a stockholder of an insurer, unless coupled with an interest, shall be revocable at will and this provision cannot be waived. The validity of every unrevoked proxy shall cease 11 months after the date of its execution unless some other definite period of validity is expressly provided therein, but in no event shall a proxy, unless coupled with an interest, be voted on after 3 years from the date of its execution.

(2) The revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the insurer.

(3) No person shall buy or sell or barter a vote or proxy, relative to any meeting of stockholders or members of an insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any such meeting. Violation of this section shall be punishable as provided in 33-1-104.

History: En. Secs. 435, 436, Ch. 286, L. 1959; R.C.M. 1947, 40-4718, 40-4719.

33-3-305. Directors — number and election. (1) The affairs of every domestic insurer must be managed by the number of directors fixed in the insurer's bylaws, which may not be less than 5 or more than 21 directors.

(2) Directors must be elected by the members or stockholders of a domestic insurer, except as provided in 33-3-306, at the time and place and for the terms, not exceeding 3 years, as may be provided in the insurer's bylaws. A majority of directors must be elected from the members or stockholders of the domestic insurer.

(3) The term of a director shall extend until a successor has been elected and has qualified.

History: En. Sec. 437, Ch. 286, L. 1959; R.C.M. 1947, 40-4720; amd. Sec. 11, Ch. 451, L. 1993.

33-3-306. Participation of policyholders in election of directors of stock insurer. The bylaws of a domestic stock life insurer may provide a plan for its policyholders to participate with stockholders in the election of its directors.

History: En. Sec. 438, Ch. 286, L. 1959; R.C.M. 1947, 40-4721.

33-3-307. Bonding of officers and employees. (1) When acting in a fiduciary capacity, officers and employees of each mutual insurer or stock insurer shall maintain a fidelity bond issued by an authorized corporate surety in favor of the insurer. The commissioner shall consider the insurer's exposure, total assets, and total income in determining the bond amount. In lieu of individual bonds, officers and employees may be covered under a blanket bond for the same respective amounts. The insurer shall file the blanket bond with the commissioner.

(2) The insurer shall pay the premium for the bond.

(3) A bond is not subject to cancellation except upon written notice to both the insurer and the commissioner, delivered not less than 30 days in advance of the effective date of the cancellation.

(4) This section may not be considered to limit the amount of bonded protection that the insurer may carry as to any officer or employee.

(5) The commissioner may adopt rules to determine the bond amount for officers and employees who are subject to the provisions of this section.

History: En. Sec. 439, Ch. 286, L. 1959; R.C.M. 1947, 40-4722; amd. Sec. 13, Ch. 531, L. 1997; amd. Sec. 18, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) at beginning of first sentence substituted "When acting in a fiduciary capacity, officers and employees" for "The president, secretary, and treasurer", after "shall" deleted "each file with the commissioner and", after "maintain" deleted "in force so long as that individual is an officer", and after "bond" deleted "in an amount set by the commissioner by rule and" and in third sentence after "officers" inserted "and employees"; deleted former (4) that read: "(4) The insurer shall provide for the bonding by authorized corporate surety of all other officers in any way responsible for the handling of the funds of the insurer"; in (4) at end after "officer" inserted "or employee"; inserted (5) allowing rulemaking by the commissioner; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

33-3-308. Prohibited pecuniary interest of officials. (1) Any officer or director or any member of any committee or an employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds shall not deposit or invest such funds except in the insurer's corporate name; shall not borrow the funds of such insurer; shall not be pecuniarily interested in any loan, pledge of deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of such insurer except as a stockholder or member; shall not take or receive to his own use any fee, brokerage, commission, gift, or other consideration for or on account of any such transaction made by or on behalf of such insurer.

(2) No insurer shall guarantee any financial obligation of any of its officers or directors.

(3) This section shall not prohibit such a director or officer or member of a committee or employee from becoming a policyholder of the insurer and enjoying the usual rights so provided for its policyholders.

(4) The commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer or to a corporation or firm in which a director is interested for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm.

History: En. Sec. 440, Ch. 286, L. 1959; R.C.M. 1947, 40-4723.

33-3-309. Management and exclusive agency contracts. (1) No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer unless the contract is filed with and approved by the commissioner. The contract shall be deemed approved unless disapproved by the commissioner within 20 days after date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within such 20 days. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

(2) The commissioner shall disapprove any such contract if he finds that it:

(a) subjects the insurer to excessive charges;

(b) is to extend for an unreasonable length of time;

(c) does not contain fair and adequate standards of performance; or

(d) contains other inequitable provision or provisions which impair the proper interests of stockholders or members of the insurer.

History: En. Sec. 441, Ch. 286, L. 1959; R.C.M. 1947, 40-4724.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-310. Agreement not to sell property prohibited. No insurer shall enter into any agreement to withhold from sale any of its property. Disposition of an insurer's property shall be at all times within the control of its board of directors.

History: En. Sec. 444, Ch. 286, L. 1959; R.C.M. 1947, 40-4727.

Part 4

Finance

Part Cross-References

Domestic insurers — taxation of real and personal property, Title 15, ch. 24, part 6.

33-3-401. Home office and records — penalty for unlawful removal of records or assets. (1) Every domestic insurer shall have and maintain its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted. Records of the insurer's operations and other financial records reasonably related to its insurance operations for the preceding 5 years must be maintained and be available to the commissioner or his duly constituted examiner.

(2) Every domestic insurer shall have and maintain its assets in this state, except as to:

(a) real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state; and

(b) such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4) below.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal or concealment of such records or assets or material part thereof from the commissioner is prohibited. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the same from this state or who conceals or attempts to conceal the same from the commissioner, in violation of this subsection, shall upon conviction thereof be guilty of a felony punishable by a fine of not more than $10,000 or by imprisonment in the penitentiary for not more than 5 years or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state beyond the period therefor specified in the commissioner's consent under which the records were so removed thereat or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 13.

(4) This section shall not be deemed to prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604(3).

History: En. Sec. 442, Ch. 286, L. 1959; R.C.M. 1947, 40-4725; amd. Sec. 141, Ch. 575, L. 1981; amd. Sec. 5, Ch. 798, L. 1991.

33-3-402. Vouchers for expenditures. (1) No insurer shall make any disbursement of $100 or more unless evidenced by a voucher correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

(2) If the disbursement is for services and reimbursement, the voucher shall describe the services and expenditures.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher shall also correctly describe the nature of the matter and of the insurer's interest therein.

(4) If a voucher cannot be obtained, the expenditure referred to in subsection (1) above shall be evidenced by an affidavit in which is set forth the character and object of the expenditure and the reasons for not obtaining a voucher therefor.

History: En. Sec. 443, Ch. 286, L. 1959; R.C.M. 1947, 40-4726.

33-3-403 through 33-3-410 reserved.

33-3-411. Contingent liability of mutual members. (1) Each member of a domestic mutual insurer shall, except as otherwise hereinafter provided with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be expressed in the policy and be in such maximum amount as is specified in the insurer's articles of incorporation.

(2) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion, if any, of the obligations of the insurer which accrued while the policy was in force.

(3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

History: En. Sec. 446, Ch. 286, L. 1959; R.C.M. 1947, 40-4729.

33-3-412. Levy of contingent liability. (1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it by this code for authority to transact the kinds of insurance being transacted and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the 12 months preceding the date notice of such assessment was mailed to them, and such members shall be liable to the insurer for the amount so assessed.

(2) The assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed 5% of the insurer's liabilities as of the date as of which the amount of such deficiency was determined.

(3) In levying an assessment upon a policy providing for contingent liability, the assessment shall be computed on the basis of the premiums earned on such policy during the period to which the assessment relates.

(4) No member shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or loss payable.

(5) As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of such member.

History: En. Sec. 447, Ch. 286, L. 1959; R.C.M. 1947, 40-4730.

33-3-413. Enforcement of contingent liability. (1) Any assessment made by an insurer under 33-3-412 or 33-3-433 shall be deemed to be prima facie correct. The amount of such assessment to be paid by each member as determined by the insurer shall be deemed to be likewise prima facie correct.

(2) The insurer shall notify each member of the amount of the assessment to be paid by written notice mailed to the address of the member last of record with the insurer. Failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

(3) If a member fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the insurer may institute suit to collect the same.

History: En. Sec. 448, Ch. 286, L. 1959; R.C.M. 1947, 40-4731.

33-3-414. Nonassessable policies of mutual insurers. (1) While possessing surplus funds in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, a domestic mutual insurer may, upon receipt of the commissioner's order so authorizing, extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued.

(2) A foreign or alien mutual insurer may issue nonassessable policies to its members in this state pursuant to its articles of incorporation and the laws of its domicile.

(3) No policy of a domestic mutual insurer which, pursuant to the commissioner's order, is without contingent liability and thereby nonassessable by its terms shall be subject to assessment for any debt or liability of the insurer.

History: En. Sec. 449, Ch. 286, L. 1959; R.C.M. 1947, 40-4732.

33-3-415. Insufficient reserves — nonassessable policies prohibited — revocation of authority. The commissioner shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked. During the absence of such authority the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder or renew any policy which is renewable at the option of the insurer without endorsing the same to provide for such contingent liability.

History: En. Sec. 450, Ch. 286, L. 1959; R.C.M. 1947, 40-4733.

33-3-416 through 33-3-420 reserved.

33-3-421. Participating policies. (1) If provided in its articles of incorporation, a domestic stock or domestic mutual insurer may issue any or all of its policies with or without participation in profits, savings, or unabsorbed portions of premiums, may classify policies issued on a participating and nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable and shall not unfairly discriminate as between policyholders within the same such classifications. A life insurer may issue both participating and nonparticipating policies only if the right or absence of right to participate is reasonably related to the premium charged. Any such domestic insurer which prior to January 1, 1961, has been issuing all or part of its policies on a participating basis without specific authorization in its articles of incorporation may continue to issue such policies on a basis not inconsistent with this section.

(2) After the third policy year no dividend otherwise earned shall be made contingent upon the payment of renewal premium on any policy.

History: En. Sec. 451, Ch. 286, L. 1959; R.C.M. 1947, 40-4734.

33-3-422. Dividends to stockholders. (1) A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available surplus funds which is derived from realized net profits on its business.

(2) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus loaned to the insurer under 33-3-431.

(3) A dividend otherwise proper may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

History: En. Sec. 452, Ch. 286, L. 1959; R.C.M. 1947, 40-4735.

33-3-423. Dividends to mutual policyholders. (1) The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings and net realized earnings in excess of the surplus required by law to be maintained.

(2) A dividend otherwise proper may be payable out of such savings and earnings even though the insurer's total surplus is then less than the aggregate of its contributed surplus.

History: En. Sec. 453, Ch. 286, L. 1959; R.C.M. 1947, 40-4736.

33-3-424. Illegal dividends — penalty. (1) Any director of a domestic stock or mutual insurer who votes for or concurs in declaration or payment of a dividend to stockholders or members other than as authorized under 33-3-422 or 33-3-423 shall upon conviction thereof be guilty of a misdemeanor and shall be jointly and severally liable, together with other such directors likewise voting for or concurring, for any loss thereby sustained by the insurer.

(2) Any stockholder receiving such an illegal dividend shall be liable in the amount thereof to the insurer.

(3) The commissioner may revoke or suspend the certificate of authority of an insurer which has declared or paid such an illegal dividend.

History: En. Sec. 454, Ch. 286, L. 1959; R.C.M. 1947, 40-4737.

Cross-References

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

Misdemeanor — penalty, 46-18-212.

33-3-425 through 33-3-430 reserved.

33-3-431. Borrowed surplus. (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, to provide it with surplus funds, or for any purpose of its business upon a written agreement that the money is required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement. The agreement may provide for interest at a rate not greater than the rate established in 25-9-205, and whether the interest constitutes a liability of the insurer must be stipulated in the agreement. A commission or promotion expense may not be paid in connection with a loan of the type described in this section.

(2) Money borrowed, together with the interest if stipulated in the agreement, does not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount stipulated in the agreement or the basis of any setoff. However, until the money or interest, or both, are repaid, financial statements filed or published by the insurer must show as a footnote the amount then unpaid together with any interest accrued but unpaid.

(3) A loan of this type to a mutual or stock insurer is subject to the commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement are approved unless within 15 days after filing the insurer is notified of the commissioner's disapproval and reasons for the disapproval. The commissioner shall disapprove any proposed loan or agreement if the commissioner finds the loan is unnecessary or excessive for the purpose intended or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information filed by the insurer is inadequate.

(4) A loan to a mutual or stock insurer or a substantial portion of the loan must be repaid by the insurer when it is no longer reasonably necessary for the purpose originally intended. Repayment of either principal or interest on the loan may not be made by a mutual or stock insurer unless approved in advance by the commissioner.

(5) This section does not apply to loans obtained by the insurer in the ordinary course of business from banks and other financial institutions or to loans secured by pledge or mortgage of assets.

History: En. Sec. 455, Ch. 286, L. 1959; R.C.M. 1947, 40-4738; amd. Sec. 6, Ch. 798, L. 1991; amd. Sec. 34, Ch. 379, L. 1995.

Cross-References

Hearings by Commissioner, 33-1-701.

33-3-432. Impairment of capital or assets. (1) If a stock insurer's capital, as represented by the aggregate par value of its outstanding capital stock, becomes impaired or the assets of a mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under 33-3-204 for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within 60 days after service of such notice.

(2) The deficiency may be made good in cash or in assets eligible under chapter 12 for the investment of the insurer's funds as follows:

(a) if a stock insurer, by reduction of the insurer's capital to an amount not below the minimum required for the kinds of insurance to be transacted; or

(b) if a mutual insurer, by amendment of its certificate of authority to cover only the kind or kinds of insurance for which the insurer has sufficient surplus under this title.

(3) If the deficiency is not made good and proof is filed with the commissioner within the 60-day period, the insurer is insolvent and the commissioner shall institute delinquency proceedings against it under chapter 2, part 13; except that if the deficiency exists because of increased loss reserves required by the commissioner or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may, upon application and good cause shown, extend for not more than an additional 60 days the period within which the deficiency may be made good and proof of making good is filed.

History: **En. Sec. 456, Ch. 286, L. 1959; R.C.M. 1947, 40-4739; amd. Sec. 12, Ch. 303, L. 1981; amd. Sec. 141, Ch. 575, L. 1981; amd. Sec. 44, Ch. 304, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 304 in (2) substituted reference to chapter 12 for reference to chapter 2, part 8; and made minor changes in style. Amendment effective July 1, 1999.

33-3-433. Assessment of stockholders or members. (1) Any insurer receiving the commissioner's notice mentioned in 33-3-432(1):

(a) if a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its articles of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If any stockholder fails to pay a lawful assessment after notice given to him in person or by advertisement in such time and manner as approved by the commissioner, the insurer may require the return of the original certificate of stock held by the stockholder and in cancellation and in lieu thereof issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the commissioner to be remaining at the time of determination of amount of impairment under 33-3-432, after deducting from such proportionate interest the amount of such unpaid assessment. The insurer may pay for or reissue fractional shares under this subsection.

(b) if a mutual insurer, shall levy such an assessment upon members as is provided for under 33-3-412.

(2) Neither this section nor 33-3-432 shall be deemed to prohibit the insurer from curing any such deficiency through any lawful means other than those referred to in such sections.

History: **En. Sec. 457, Ch. 286, L. 1959; R.C.M. 1947, 40-4740.**

33-3-434. Directors' liability for losses during deficiency. The directors of the insurer shall be individually liable as to losses incurred under policies issued by the insurer after expiration of the period provided in 33-3-432 for curing any deficiency of the insurer's capital stock or surplus and prior to the curing of the deficiency.

History: **En. Sec. 458, Ch. 286, L. 1959; R.C.M. 1947, 40-4741.**

33-3-435. Stock transfer during impairment of capital. Any transfer of the stock of a domestic insurer made during the existence of any impairment of such insurer's capital does not release the stockholder making the transfer from any liability as a stockholder of such insurer which accrued prior to such transfer.

History: **En. Sec. 459, Ch. 286, L. 1959; R.C.M. 1947, 40-4742.**

33-3-436. Mutual member's share of assets on liquidation. (1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration shall be distributed to existing persons who were its members at any time within 36 months next preceding the date such liquidation was authorized or ordered or date of last termination of the insurer's certificate of authority, whichever date is the earlier.

(2) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his membership bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and if a life insurer shall, make a reasonable classification of its policies so held by such members, and a formula based upon such classification, for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the commissioner.

History: **En. Sec. 466, Ch. 286, L. 1959; R.C.M. 1947, 40-4749.**

33-3-437 through 33-3-440 reserved.

33-3-441. Equity securities of domestic stock insurance company — statement of ownership. (1) When used in 33-3-441 through 33-3-447, the term "equity security" means any stock or similar security; any security convertible, with or without consideration, into such a security or carrying any warrant or right to subscribe to or purchase such a security; any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(2) Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance company or who is a director or an officer of such company shall file with the commissioner, within 10 days after he becomes such beneficial owner, director, or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter.

(3) If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

History: En. Secs. 1, 6, Ch. 159, L. 1965; R.C.M. 1947, 40-4751, 40-4756.

33-3-442. Inside trading of securities — profit inures to company — limitation of action to recover — rules. (1) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than 6 months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding 6 months.

(2) Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter, but no such suit shall be brought more than 2 years after the date such profit was realized.

(3) This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved or any transaction or transactions which the commissioner by rules may exempt as not comprehended within the purpose of this section.

History: En. Sec. 2, Ch. 159, L. 1965; R.C.M. 1947, 40-4752.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Promulgation of rules, 33-1-313.

33-3-443. Short sales of equity securities prohibited — time for delivery after sale. (1) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal:

(a) does not own the security sold; or

(b) if owning the security, does not deliver it against such sale within 20 days thereafter or does not within 5 days after such sale deposit it in the mails or other usual channels of transportation.

(2) No person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time or that to do so would cause undue inconvenience or expense.

History: **En. Sec. 3, Ch. 159, L. 1965; R.C.M. 1947, 40-4753.**

33-3-444. Exemptions — securities held in an investment account — primary or secondary market — rules. (1) The provisions of 33-3-442 shall not apply to any purchase and sale, or sale and purchase, and the provisions of 33-3-443 shall not apply to any sale of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account by a broker-dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security.

(2) The commissioner may, by such rules as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: **En. Sec. 4, Ch. 159, L. 1965; R.C.M. 1947, 40-4754.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-3-445. Exemptions — arbitrage transactions. The provisions of 33-3-441 through 33-3-443 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules as the commissioner may adopt in order to carry out the purposes of 33-3-441 through 33-3-447.

History: **En. Sec. 5, Ch. 159, L. 1965; R.C.M. 1947, 40-4755.**

33-3-446. Exemptions — registered securities — holding by less than 100 persons. The provisions of 33-3-441 through 33-3-443 shall not apply to equity securities of a domestic stock insurance company if:

(1) such securities shall be registered or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended; or

(2) such domestic stock insurance company shall not have any class of its equity securities held of record by 100 or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of 33-3-441 through 33-3-443 except for the provisions of this subsection (2).

History: **En. Sec. 7, Ch. 159, L. 1965; R.C.M. 1947, 40-4757.**

Cross-References

Securities regulation — registration, Title 30, ch. 10, part 2.

33-3-447. Rules of commissioner — classifications — effect. (1) The commissioner may make such rules as may be necessary for the execution of the functions vested in him by 33-3-441 through 33-3-446 and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction.

(2) No provision of 33-3-441 through 33-3-443 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the commissioner, notwithstanding that such rule may, after such act or omission, be

amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: **En. Sec. 8, Ch. 159, L. 1965; R.C.M. 1947, 40-4758.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Promulgation of rules, 33-1-313.

Part 5
Insurance Operations

33-3-501. Repealed. Sec. 29, Ch. 303, L. 1981.

History: **En. Sec. 430, Ch. 286, L. 1959; R.C.M. 1947, 40-4713.**

33-3-502. Solicitations in other states. (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section shall not prohibit advertising through publication and radio, television, and other broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated and if such advertising is not specifically directed to residents of such reciprocating state.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. It shall not prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state.

(4) A reciprocating state, as used herein, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by him, after a hearing, to have violated this section.

History: **En. Sec. 445, Ch. 286, L. 1959; R.C.M. 1947, 40-4728.**

Cross-References

Hearings by Commissioner, 33-1-701.

Revocation or suspension of certificate of authority, 33-2-118.

33-3-503. Membership in mutuals. (1) Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of such membership, and the policy shall so specify.

(2) Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee, or fiduciary may be a member of a domestic, foreign, or alien mutual insurer. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association, or estate may be recognized as acting for or on its behalf for the purpose of such membership and shall not be personally liable upon any contract of insurance for acting in such representative capacity.

(3) Any domestic corporation may participate as a member of a mutual insurer as an incidental purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

History: **En. Sec. 431, Ch. 286, L. 1959; R.C.M. 1947, 40-4714.**

Part 6

Dissolution and Liquidation

Part Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

Dissolution and liquidation of corporations, Title 35, ch. 1, part 9.

33-3-601. Voluntary dissolution of domestic insurers — plan of dissolution. At least 60 days before an insurer submits a proposed voluntary dissolution to shareholders or policyholders under 35-1-932 or voluntarily dissolves under 35-1-931, the insurer must file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under 35-1-931 through 35-1-935, except that 35-1-938(4) does not apply. The papers required by 35-1-931 through 35-1-935 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-1-217 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under chapter 2, part 13, of this title.

History: En. Sec. 2, Ch. 389, L. 1987; amd. Sec. 189, Ch. 368, L. 1991.

33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under 35-1-931 and 35-1-932 apply to the commissioner to have the liquidation continued under his supervision; thereupon, the commissioner shall apply to the court for liquidation under 33-2-1341.

History: En. Sec. 3, Ch. 389, L. 1987; amd. Sec. 190, Ch. 368, L. 1991.

33-3-603. Revocation of voluntary dissolution. If an insurer revokes the voluntary dissolution proceedings under 35-1-934, the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner.

History: En. Sec. 4, Ch. 389, L. 1987; amd. Sec. 191, Ch. 368, L. 1991.

33-3-604. Distribution of assets of a mutual insurer. The maximum amount that a mutual insurer may pay to a policyholder upon dissolution, in addition to the benefits promised in the insurance policy, is the total of the premium payments made by the policyholder with interest at the legal rate compounded annually. Any excess over such amounts must be deposited with the state treasurer to the credit of the state general fund. A person may participate in the distribution of assets of a mutual insurer only if he has a policy in effect 180 days before the insurer files its plan for dissolution with the commissioner. The amount that a person eligible to participate in the distribution of assets of a mutual insurer may receive must be in the proportion that the premiums paid by the policyholder bear to the total premiums paid to the mutual insurer by all policyholders who had policies in effect 180 days before the insurer filed its plan for dissolution with the commissioner.

History: En. Sec. 5, Ch. 389, L. 1987.

Part 7

Disclosure of Material Transactions

33-3-701. Short title. This part may be cited as the "Disclosure of Material Transactions Act".

History: En. Sec. 78, Ch. 379, L. 1995.

33-3-702. Report. (1) An insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions have been submitted to the commissioner for review or approval or for information purposes pursuant to other provisions of the insurance code, laws, or regulations or other requirements.

(2) The report required in subsection (1) is due within 15 days after the end of the calendar month in which any of the transactions in subsection (1) occur.

(3) One complete copy of the report, including any exhibits or other attachments, must be filed with:

(a) the insurance department of the state in which the insurer is domiciled; and

(b) the national association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner pursuant to this part must be treated confidentially, may not be subject to subpoena, and may not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior consent of the insurer to which it pertains unless the commissioner, after giving the insurer notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by publication, in which event the commissioner may publish all or any part of the report in the manner the commissioner chooses.

History: En. Sec. 79, Ch. 379, L. 1995.

33-3-703. Acquisitions and dispositions of assets. (1) Acquisitions or dispositions of assets that are not material are not required to be reported pursuant to 33-3-702 if the acquisitions or dispositions are not material. For purposes of this part, a material acquisition or the aggregate of any series of related acquisitions during any 30-day period or a disposition or the aggregate of any series of related dispositions during any 30-day period is one that is nonrecurring and not in the ordinary course of business and involves more than 5% of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.

(2) Asset acquisitions subject to this part include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition, other than the construction or development of real property, by or for the reporting insurer or the acquisition of materials for this purpose.

(3) Asset dispositions subject to this part include each sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

(4) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

(a) the date of the transaction;

(b) the manner of acquisition or disposition;

(c) the description of the assets involved;

(d) the nature and amount of the consideration given or received;

(e) the purpose or reason for the transaction;

(f) the manner by which the amount of consideration was determined;

(g) the gain or loss recognized or realized as a result of the transaction; and

(h) the names of the persons from whom the assets were acquired or to whom they were disposed.

(5) An insurer is required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer cedes substantially all of its direct and assumed business to a pool if the insurer has less than $1 million total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus.

History: En. Sec. 80, Ch. 379, L. 1995.

33-3-704. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) A nonrenewal, cancellation, or revision of a ceded reinsurance agreement need not be reported pursuant to 33-3-702 if the nonrenewal, cancellation, or revision is not material. For purposes of this part, a material nonrenewal, cancellation, or revision is one that affects:

(a) property and casualty business, including disability business written by a property and casualty insurer, so that:

(i) more than 50% of the insurer's total ceded written premium is affected; or

(ii) more than 50% of the insurer's total ceded indemnity and loss adjustment reserves are affected;

(b) life, annuity, and disability business, so that more than 50% of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement is affected;

(c) either property and casualty or life, annuity, and disability business and causes either of the following events that constitutes a material revision that must be reported:

(i) an authorized reinsurer representing more than 10% of a total cession is replaced by one or more unauthorized reinsurers; or

(ii) previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than 10% of a total cession.

(2) However, a filing is not required if:

(a) with respect to property and casualty business, including disability business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than 10% of its total written premium for direct and assumed business; or

(b) with respect to life, annuity, and disability business, the total reserve credit taken for business ceded represents, on an annualized basis, less than 10% of the statutory reserve requirement prior to any cession.

(3) The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(a) the effective date of the nonrenewal, cancellation, or revision;

(b) the description of the transaction with an identification of the initiator of the transaction;

(c) the purpose or reason for the transaction; and

(d) if applicable, the identity of the replacement reinsurers.

(4) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the

insurer is part of a consolidated group of insurers that uses a pooling arrangement or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is considered to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than $1 million total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus.

History: En. Sec. 81, Ch. 379, L. 1995.

CHAPTER 4

FARM MUTUAL INSURERS

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Part 1
General Provisions

33-4-101. Scope of chapter — provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as provided in this chapter.

(3) The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions of this chapter: chapter 1, parts 1 through 4, 7, 12, and 13; 33-2-112; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; 33-2-1212; chapter 2, parts 13 and 16; 33-3-218; 33-3-308; 33-3-309; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18.

History: En. Secs. 468, 520, Ch. 286, L. 1959; R.C.M. 1947, 40-4801, 40-4853; amd. Sec. 141, Ch. 575, L. 1981; amd. Sec. 12, Ch. 451, L. 1993; amd. Sec. 1, Ch. 158, L. 1997; amd. Sec. 19, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (3) in list of references after "7" inserted "12, and 13"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Board of Hail Insurance — powers and duties, 2-15-3003; Title 80, ch. 2, part 2.

33-4-102. Definitions. (1) A "county mutual insurer" is a farm mutual insurer authorized to insure property and liability risks located in the county in which its principal office is located and in the counties in this state with boundaries contiguous with the principal office county.

(2) A "farm mutual insurer" is an insurer that meets the qualifications of 33-4-101(1).

(3) A "state mutual insurer" is a farm mutual insurer authorized to insure property and liability risks throughout the state.

(4) "Surplus" is the extent to which the value of an insurer's assets exceeds its liabilities.

History: En. Secs. 469, 481, Ch. 286, L. 1959; R.C.M. 1947, 40-4802, 40-4814; amd. Sec. 2, Ch. 158, L. 1997.

33-4-103. Corporate powers in general. (1) An insurance corporation formed under this chapter or existing on January 1, 1961, and of a type which might be formed under this chapter shall have the same capacity to act possessed by individuals but with authority to perform only such lawful acts as are necessary or proper to accomplish its purposes.

(2) Without affecting the authority contained in subsection (1) above, every such corporation shall have the following corporate powers:

(a) to have succession by its corporate name for the period stated in its articles;

(b) to sue and be sued in its corporate name;

(c) to adopt, use, and alter a corporate seal;

(d) to acquire, hold, sell, use, dispose of, pledge, or mortgage any such property as its purpose may require, subject to any limitation prescribed by law or the articles of incorporation;

(e) to transact insurance;

(f) to conduct its affairs through its directors, officers, employees, insurance producers, and representatives thereunto duly authorized;

(g) to make bylaws not inconsistent with law for the exercise of its corporate powers, the management, regulation, and government of its affairs and property, including but not limited to calling and holding of meetings of its directors or members, and to modify or amend such bylaws;

(h) to exercise, subject to law and the express provisions of the articles of incorporation, all such incidental and subsidiary powers as may be necessary or convenient to the attainment of the objectives set forth in such articles;

(i) to dissolve and wind up or be dissolved and wound up in the manner provided by law.

History: En. Sec. 479, Ch. 286, L. 1959; R.C.M. 1947, 40-4812; amd. Sec. 1, Ch. 713, L. 1989.

Part 2

Formation

33-4-201. Eligible incorporators. (1) One hundred or more individuals residing in this state, each of whom is 18 years of age or more, who collectively own farm property as referred to in 33-4-501(1)(a) valued at not less than $500,000 which they desire to insure, and each of whom owns farm lands or ranch lands situated in this state valued at not less than $5,000, may incorporate a state mutual insurer.

(2) Twenty-five or more individuals residing in this state, each of whom is 18 years or more of age, each of whom owns farm land or ranch land valued at $5,000 or more in the county wherein is to be located the principal office of the proposed insurer or in any county in this state contiguous with such county, and who collectively own in such counties farm property referred to in 33-4-501(1)(a) valued at not less than $125,000 which they desire to insure, may incorporate a county mutual insurer.

History: En. Sec. 474, Ch. 286, L. 1959; amd. Sec. 8, Ch. 423, L. 1971; R.C.M. 1947, 40-4807.

33-4-202. Declaration of intention to incorporate — articles of incorporation — fee. (1) The individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the commissioner:

(a) a declaration of their intention to form the corporation signed by at least 100 incorporators if a proposed state mutual insurer or by at least 25 incorporators if a proposed county mutual insurer; and

(b) four copies of proposed articles of incorporation executed by three or more of the incorporators. The signatures of the incorporators must be notarized.

(2) The articles of incorporation must state:

(a) the name of the corporation. If a state mutual insurer, the words "farm mutual" must be a part of the name; if a county mutual insurer, the name must contain the words "farm mutual" or "rural mutual" together with the name of the county in which its principal place of business is to be located. The name may not be so similar to one already used by a corporation in this state as to be misleading.

(b) if a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located;

(c) if a state mutual insurer, the location of its principal business office, which must be located in this state;

(d) the objects and purposes for which the corporation is formed;

(e) whether the insurer intends to transact business on the cash premium plan or the assessment plan;

(f) the duration of the corporation's existence, which may be perpetual;

(g) the number of its directors, which may not be less than 5 or more than 11, and the names and addresses of the members of the initial board of directors appointed to manage the affairs of the corporation until the first annual meeting of the members at which time successors are elected and qualified;

(h) other provisions, not inconsistent with law, considered appropriate by the incorporators;

(i) the names, residences, and addresses of the incorporators and the value of their property to be insured in the county or counties where the operations of the corporation are to be transacted.

(3) At the time of filing of the articles of incorporation as provided in subsection (1), the incorporators shall pay to the commissioner a filing fee of $10. The commissioner shall deposit the fees with the state treasurer to the credit of the general fund.

History: En. Sec. 475, Ch. 286, L. 1959; R.C.M. 1947, 40-4808; amd. Sec. 35, Ch. 379, L. 1995; amd. Sec. 14, Ch. 531, L. 1997.

33-4-203. Approval of articles — commencement of corporate existence. (1) If the commissioner finds the proposed articles of incorporation to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States or of this state, the commissioner shall make a certificate of the facts.

(2) If the commissioner considers the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, the commissioner shall reject the name applied for and shall notify the incorporators of the rejection.

(3) When the proposed articles of incorporation have been approved by the commissioner, the commissioner shall endorse the approval upon each set of the articles and forward three sets of articles to the incorporators. The incorporators shall file, with the required filing fee, one of the sets of articles with the secretary of state and one set certified by the secretary of state with the commissioner. The remaining set of articles must be made a part of the corporation's records.

(4) The corporation has legal existence upon the approval of the articles by the commissioner and completion of the filings required in subsection (3), but it may not transact business as an insurer until it has obtained a certificate of authority as provided in 33-4-505.

History: En. Sec. 476, Ch. 286, L. 1959; R.C.M. 1947, 40-4809; amd. Sec. 13, Ch. 451, L. 1993; amd. Sec. 36, Ch. 379, L. 1995; amd. Sec. 15, Ch. 531, L. 1997; amd. Sec. 20, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) near end after "United States" deleted "of America"; in (3) in first sentence after "forward" substituted "three" for "four" and in second sentence after "file" inserted "with the required filing fee", after "one set" inserted "certified by the secretary of state", and at end deleted "bearing the certification of the secretary of state, and one set with the county clerk of the county in which the principal place of business of the corporation is located and shall pay to the secretary of state and the county clerk the customary filing fees"; in (4) near end before "obtained" deleted "fulfilled the requirements for and has"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Secretary of State — fee for filing documents, 2-6-103.

County Clerk — filing fee, 7-4-2631.

33-4-204. Amendment of articles. A farm mutual insurer may, by a vote of two-thirds of its members present at any annual meeting or at any special meeting called for that purpose, amend its articles of incorporation to extend its corporate duration or any other particular within the scope of this chapter by causing amended articles to be filed in the same form and manner as required for original articles of incorporation. The commissioner shall review the amended articles for compliance with this title. The amended articles of incorporation may be signed only by the president and secretary of the corporation and attested by the corporate seal. Notice of the proposed amendment must be contained in the notice of the annual or special meeting.

History: En. Sec. 477, Ch. 286, L. 1959; R.C.M. 1947, 40-4810; amd. Sec. 16, Ch. 531, L. 1997.

33-4-205. Certified copies of articles as evidence. A copy of the articles of incorporation of a farm mutual insurer and any amendments thereof filed pursuant to law and certified by the commissioner shall be received in all courts and other places as prima facie evidence of the facts therein stated and of the due incorporation of the insurer.

History: En. Sec. 478, Ch. 286, L. 1959; R.C.M. 1947, 40-4811.

Cross-References

Evidence — public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

33-4-206. Initial qualifications. When applying for an original certificate of authority as an insurer newly organized in this state, the insurer must have surplus as required by 33-4-401, be otherwise qualified therefor under this code, and:

(1) if a county mutual insurer, it must have received acceptable bona fide written applications from 25 separate persons for substantial insurance of the kinds of insurance proposed to be transacted, aggregating at least $100,000. Such applicants must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required therefor, subject to the insurer qualifying to transact the kinds of insurance so applied for.

(2) if a state mutual insurer, it must have received acceptable bona fide written applications from 100 separate persons, each for substantial insurance, aggregating at least $500,000 of the kinds of insurance proposed to be transacted. Such applicants must have given to the insurer the obligations referred to in 33-4-508 or

paid the premium required therefor, subject to the insurer qualifying to transact the kinds of insurance so applied for.

(3) if to insure growing crops against loss or damage by hail, it must have received applications for such hail insurance from not less than 100 persons resident in Montana owning in the aggregate not less than 5,000 acres of grain. Each such applicant must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required therefor, subject to the insurer qualifying to transact insurance.

History: En. Sec. 480, Ch. 286, L. 1959; R.C.M. 1947, 40-4813.

Cross-References

State hail insurance, 2-15-3003; Title 80, ch. 2, part 2.

Certificate of authority, 33-4-505.

Part 3

Management

33-4-301. Bylaws — adoption — power to amend. Upon commencement of the legal existence of an insurer, its initial board of directors shall adopt such original bylaws, not inconsistent with the state constitution or this chapter, as may be deemed necessary for the management of its affairs. The bylaws shall be subject to the approval of the insurer's members at their next succeeding meeting. The members shall otherwise have the power to make, modify, and revoke bylaws.

History: En. Sec. 484, Ch. 286, L. 1959; R.C.M. 1947, 40-4817.

33-4-302. Bylaws — contents. (1) The bylaws of a farm mutual insurer shall provide:

(a) as to the liability of each member for payment of the expenses and losses of the insurer and what obligations shall be given therefor when a person applies for insurance;

(b) as to the time when obligations of members for losses and expenses become due;

(c) for limitation of liability of members for the payment of expenses and losses of the insurer;

(d) the terms of office of the directors. At least part of the directors shall be elected at each annual meeting of members. The term of any director shall not be longer than 3 years.

(e) the date of the annual meeting of the members, at which vacancies existing or occurring on the board of directors are to be filled by election by the members. Each member shall be permitted to cast at least one vote, either in person or, if so authorized in the bylaws, by proxy, for each director to be elected and may cumulate his votes for one or more directors, not exceeding the number to be elected.

(f) how directors are to be elected in case no election occurs at the annual meeting or in event of resignation, disability, or death of a director;

(g) the manner and time of giving notice of annual and special meetings of members.

(2) The bylaws may provide:

(a) the character of property to be insured and under what restrictions and limitations;

(b) restrictions and limitations as to membership and the powers, duties, and obligations of the members other than as to obligations covered under subsection (1)(a) above;

(c) the manner of making and collecting assessments;

(d) the manner of the suspension and expulsion of members;

(e) the form of application and the form of policy;

(f) the manner of making proof, adjustment, and payment of losses;

(g) as to who is authorized to adjust losses for the insurer;

(h) for arbitration as provided in 33-4-411, in event the insurer's adjuster and any claimant cannot agree as to the amount of any insured damage or loss;

(i) the duties and compensation of the officers and the bonds to be required of them;

(j) the books and records to be kept by the insurer, reports required of the officers, and the manner of examining and auditing their accounts;

(k) what shall be contained on the corporate seal and when the seal shall be required to be used;

(l) such other matters as may be deemed necessary or convenient for the management of the affairs of the insurer.

History: En. Sec. 485, Ch. 286, L. 1959; R.C.M. 1947, 40-4818.

33-4-303. Bylaws binding upon members. The bylaws of a farm mutual insurer are binding upon all of its members and as from time to time amended are a part of the contracts of insurance between the insurer and its members.

History: En. Sec. 486, Ch. 286, L. 1959; R.C.M. 1947, 40-4819.

33-4-304. Annual meetings of members — where held. Annual meetings of the members of a farm mutual insurer may be held at its principal business office or at any other place located in any county in this state in which the insurer is authorized to transact insurance.

History: En. Sec. 488, Ch. 286, L. 1959; R.C.M. 1947, 40-4821.

33-4-305. Annual meeting — presentation of annual statement. The annual statement of the insurer as required to be filed with the commissioner under 33-4-313 shall be presented at the annual meeting of the members of the insurer next following the end of the calendar year to which such statement relates.

History: En. Sec. 489, Ch. 286, L. 1959; R.C.M. 1947, 40-4822.

33-4-306. Adjourned annual meetings — notice. Notice of any adjourned annual meeting of members shall be given to the members of an insurer in the same manner as provided in the insurer's bylaws for the regular annual meeting of members.

History: En. Sec. 490, Ch. 286, L. 1959; R.C.M. 1947, 40-4823.

33-4-307. Members' voting rights. Each member of an insurer is entitled to one vote upon each matter coming to a vote at meetings of members of the insurer. A member may vote by written proxy if and as may be provided in the insurer's bylaws. No such proxy shall be made irrevocable or for longer than 1 year.

History: En. Sec. 491, Ch. 186, L. 1959; R.C.M. 1947, 40-4824.

33-4-308. Board of directors — quorum. (1) The general management of the affairs of a farm mutual insurer is vested in its board of directors.

(2) A majority of the directors shall constitute a quorum to do business at any lawful meeting of the board.

History: En. Sec. 494, Ch. 286, L. 1959; R.C.M. 1947, 40-4827.

33-4-309. Directors — election and term. (1) Directors of a farm mutual insurer shall be elected by its members by ballot for terms not to exceed 3 years and shall hold office until their respective successors are elected and have qualified.

(2) No individual shall serve as a director unless a member of the insurer.

History: En. Sec. 495, Ch. 286, L. 1959; R.C.M. 1947, 40-4828.

33-4-310. Officers. The board of directors of an insurer shall elect from their number a president and vice-president. The board shall also elect a secretary and treasurer or a secretary-treasurer, who may or may not be members of the insurer. Officers shall hold their offices for 1 year and until their successors are elected and qualified, unless earlier removed by the board of directors.

History: **En. Sec. 496, Ch. 286, L. 1959; R.C.M. 1947, 40-4829.**

33-4-311. Bonding of officers, managers, and employees. (1) When acting in a fiduciary capacity, officers, managers, and employees shall each give bonds to the insurer for the faithful performance of their duties. The bond must be issued by an authorized corporate surety.

(2) The commissioner may adopt rules to determine the amount of the bonds required under this section.

History: **En. Sec. 497, Ch. 286, L. 1959; R.C.M. 1947, 40-4830; amd. Sec. 21, Ch. 472, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 472 in (1) at beginning of first sentence substituted "When acting in a fiduciary capacity, officers, managers, and employees" for "The treasurer and secretary of an insurer" and at end after "duties" deleted "in such amount as is designated by the board of directors"; inserted (2) allowing rulemaking by the commissioner; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Surety bonds, Title 28, ch. 11, part 4.

Suretyship, Title 33, ch. 26.

33-4-312. Officers, insurance producers, and employees not licensed — exception for liability insurance. (1) Except as provided in subsection (2), no insurance producer of an insurer is required to obtain a license or authority from any public official to transact business for such insurer, nor is the insurer or any of its officers, insurance producers, or employees required to pay any fee or license for the transaction of the business of the insurer, except as provided in this chapter.

(2) A farm mutual insurer that offers liability insurance is required to have an insurance producer licensed by the state of Montana to transact liability insurance, and no person may offer, solicit, take applications for, procure, or place for others liability insurance by a farm mutual insurer unless he or she is licensed under Title 33, chapter 17.

History: **En. Sec. 498, Ch. 286, L. 1959; R.C.M. 1947, 40-4831; amd. Sec. 1, Ch. 28, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.**

33-4-313. Annual statement. The president and secretary of each insurer, on or before March 1 each year, shall prepare, affirm under oath, and file with the commissioner, on forms prescribed and furnished by the commissioner, an annual statement for the preceding calendar year showing the condition of the insurer as of December 31 of the preceding year and exhibiting the following facts:

(1) the names of the president and secretary;

(2) the date of the annual meeting;

(3) the amount of insurance in force;

(4) the number of members;

(5) the number of assessments made during the year;

(6) the amount paid in losses during the year;

(7) the number of members withdrawn, suspended, and expelled during the year;

(8) the number of new members admitted during the year;

(9) the expenses during the year;

(10) the amount of money on hand;

(11) the amount and character of the insurer's assets;

(12) the amount of the insurer's liabilities, including any reserves required to be established under this chapter; and

(13) other information concerning the insurer's affairs that the commissioner may reasonably require.

History: **En. Sec. 499, Ch. 286, L. 1959; R.C.M. 1947, 40-4832; amd. Sec. 1, Ch. 337, L. 1987; amd. Sec. 17, Ch. 531, L. 1997; amd. Sec. 22, Ch. 472, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 472 in introductory clause after "oath" deleted "affix the corporate seal to"; deleted former (7) that read: "(7) the amount of the losses claimed and not paid, with the reason for nonpayment"; and made minor changes in style. Amendment effective October 1, 1999.

33-4-314. Annual statement — exclusive report — penalty for failure to file. (1) A report, statement, or return of any nature may not be required of any farm mutual insurer other than those required by 33-4-313.

(2) The commissioner may:

(a) suspend or revoke the certificate of authority of any insurer failing to file its annual statement as required; or

(b) impose a fine of up to $100 a day for each day that an insurer is late in filing its annual statement, with the aggregate penalty not to exceed $1,000.

History: En. Sec. 500, Ch. 286, L. 1959; R.C.M. 1947, 40-4833; amd. Sec. 18, Ch. 531, L. 1997.

Cross-References

Certificate of authority, 33-4-505.

33-4-315. Examination by commissioner — expense. (1) The commissioner has power, at any time, to investigate and examine the affairs and books of any insurer.

(2) The insurer shall pay the costs of investigation and examination by the commissioner in the same manner as prescribed in 33-1-413.

History: En. Sec. 501, Ch. 286, L. 1959; R.C.M. 1947, 40-4834; amd. Sec. 1, Ch. 177, L. 1987.

33-4-316. Records — inspections. (1) A farm mutual insurer, through its president and secretary, shall keep or cause to be kept accurate records and accounts of its transactions. The books, files, and records of the insurer shall be located at its principal place of business or, in the case of a county mutual insurer, at such place within the county of its principal place of business as may be designated by the insurer's board of directors and shown in the minutes of the board.

(2) The books, files, and records of the insurer shall be available for inspection by the insurer's directors and officers and by the commissioner or his duly constituted examiner at all reasonable times.

History: En. Sec. 508, Ch. 286, L. 1959; R.C.M. 1947, 40-4841.

Part 4

Finance

33-4-401. Surplus funds required. A domestic farm mutual insurer may hereafter be authorized to transact insurance if otherwise in compliance with the applicable provisions of this chapter, if it has and thereafter maintains surplus funds as follows:

(1) if a state mutual insurer, surplus of not less than $100,000;

(2) if a county mutual insurer, surplus of not less than $20,000; or

(3) if to insure growing crops against hail or other hazards, surplus in the amount of 150% of the amount otherwise required under this section. This provision (3) shall not apply as to any domestic insurer first authorized as such prior to January 1, 1956, which transacts business on the pro rata, nonassessable plan, under which plan a pro rata portion only of insured losses is paid in event advance premiums collected are inadequate to pay all such losses in full.

History: En. Sec. 482, Ch. 286, L. 1959; R.C.M. 1947, 40-4815.

33-4-402. Members' liability — limitation. All liability of the members of a farm mutual insurer shall be as limited in the insurer's bylaws. As to insurers transacting business on the cash premium plan, the limitation shall comply with

33-4-504(4). No member shall be required to pay more than the full amount of his obligation given to the insurer or of his liability as provided for in the bylaws.

History: En. Sec. 492, Ch. 286, L. 1959; R.C.M. 1947, 40-4825.

33-4-403. Investments. (1) When directed by a majority vote of its members present at a meeting of members, the directors of a farm mutual insurer may invest the insurer's funds or any part of the funds in any of the following:

(a) bonds or other securities issued by the United States government or by any agency of the United States;

(b) bonds or other obligations the payment of the interest and principal of which is assumed or guaranteed by the United States government or any agency of the United States;

(c) general obligation bonds or warrants of any state, county, or city, when approved by the commissioner;

(d) loans secured by a first mortgage on real estate situated in the state of Montana but subject to the provisions of subsection (3);

(e) common stock of a domestic insurer formed as an affiliate company to two or more farm mutual insurers for the purpose of offering companion insurance products that farm mutual insurers are prohibited from selling. The investment may not exceed one-third of the assets of the farm mutual insurer.

(f) corporate bonds that are rated A3 or better by Moody's investor service, inc., or A- or better by Standard and Poor's corporation and that are issued with the full credit of the parent corporation. An investment in corporate bonds may not exceed 20% of the total assets of the mutual insurer, and no more than 5% of the total assets of the mutual insurer may be invested with one corporation.

(g) money market funds as defined by rules adopted by the commissioner. An investment in money market funds may not exceed 20% of the total assets of the mutual insurer, and no more than 5% of the total assets of the mutual insurer may be invested in a single money market fund.

(2) At the time of making an investment the document evidencing the investment must be stamped with the name of the insurer with the following notation printed or written on the document: "Negotiable only upon the order of the Board of Directors of .... (naming the insurer)."

(3) A real estate loan may not be for more than 60% of the appraised value of the real estate securing the loan, and the appraisal must have been made within 30 days prior to the date of the loan. The loan may not be for a term longer than 10 years. This subsection does not prevent the renewal or extension of loans already made and does not apply to real estate loans that are insured under the provisions of any act of the congress of the United States or to the making, extension, or renewal of any loans that are made under subchapter II of the act of congress known as the "Servicemen's Readjustment Act of 1944", or any amendment thereof or supplement thereto, as to any part of the loans. This subsection does not prevent an insurer from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the same real estate or from accepting a second lien on real estate to secure the payment of a debt previously contracted in good faith. This subsection does not prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when in the judgment of the insurer's board of directors the subsequent liens are necessary to further secure the payment of any debts and save the insurer from loss.

History: En. Sec. 502, Ch. 286, L. 1959; R.C.M. 1947, 40-4835; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 145, Ch. 575, L. 1981; amd. Exec. Ord. No. 16-81; amd. Sec. 1, Ch. 77, L. 1983; amd. Sec. 1, Ch. 334, L. 1993.

Cross-References

Restrictive endorsements — negotiable instruments, 30-3-205.

33-4-404. Repealed. Sec. 44, Ch. 531, L. 1997.

History: En. Sec. 503, Ch. 286, L. 1959; R.C.M. 1947, 40-4836.

33-4-405. Safety fund. (1) Any domestic farm mutual insurer may create a safety fund, in addition to any surplus required under 33-4-401 or reserve otherwise required, for the purpose of paying insured losses or lawful expenses or obligations of the insurer as they are incurred.

(2) The safety fund shall not exceed in amount 3% of the total amount of insurance in force in the insurer.

(3) The safety fund shall not be used for any purpose except as specified in subsection (1) above.

History: En. Sec. 504, Ch. 286, L. 1959; R.C.M. 1947, 40-4837.

33-4-406. Reserves — cash premium plan. Each insurer transacting business on the cash premium plan shall maintain the following reserves:

(1) a loss reserve, in amount reasonably adequate to pay in full all losses already incurred but currently unpaid. The amount subsequently paid on such losses shall be credited against this reserve.

(2) a reserve for unearned premiums, which reserve shall be computed at 50% of net premiums (gross premiums less premiums returned) charged and collected for unexpired policy periods that commenced during the calendar year covered by the financial statement plus 100% of such net premiums charged and collected in advance for policy periods that are to commence after such calendar year. In the alternative, the insurer may at its option compute its entire reserve for unearned premiums as the aggregate amount of the pro rata unearned premiums for each policy in force as at the end of the calendar year to be covered by the financial statement.

History: En. Sec. 505, Ch. 286, L. 1959; R.C.M. 1947, 40-4838.

33-4-407. Profits or dividends. No insurer shall accumulate any profits as such or pay any dividends. This provision shall not be deemed to prohibit an insurer from accumulating and maintaining surplus funds as required to be maintained by it under this chapter or a safety fund as authorized under 33-4-405 or from accumulating and maintaining other voluntary reserves for such purposes and in such amounts as may be reasonable. Limitations upon any such accumulations and the purposes thereof may be provided for in the insurer's bylaws.

History: En. Sec. 506, Ch. 286, L. 1959; R.C.M. 1947, 40-4839.

33-4-408. Deficiency of surplus. (1) If the surplus funds of a farm mutual insurer at any time fall below the amount required to be maintained under this chapter, the insurer shall cure such deficiency within 6 months thereafter, notwithstanding that new losses or expenses may be incurred within such 6-month period.

(2) If the deficiency is not so cured, the commissioner may, upon the insurer's written application therefor, allow an additional reasonable period, not to exceed 6 months, for the curing of the deficiency.

(3) If the deficiency is not so cured within the first 6-month period, if additional time is not so applied for, or within such additional period as the commissioner may so allow, the commissioner shall forthwith suspend or revoke the insurer's certificate of authority.

History: En. Sec. 507, Ch. 286, L. 1959; R.C.M. 1947, 40-4840.

Cross-References

Certificate of authority, 33-4-505.

33-4-409. Repealed. Sec. 44, Ch. 531, L. 1997.

History: En. Sec. 509, Ch. 286, L. 1959; R.C.M. 1947, 40-4842; amd. Sec. 2, Ch. 177, L. 1987; amd. Sec. 1, Ch. 327, L. 1987.

33-4-410. Losses — notice — adjustment. (1) Every member of a domestic farm mutual insurer who has sustained any insured loss or damage shall immediately notify the insurer's secretary thereof and of the amount of damage or loss claimed.

(2) Upon receipt of the notice of loss referred to in subsection (1) above, the secretary shall notify the person or persons authorized by the bylaws of such insurer to ascertain the amount of the loss or damage and adjust the same.

History: En. Sec. 514, Ch. 286, L. 1959; R.C.M. 1947, 40-4847.

33-4-411. Arbitration — committee — compensation. (1) If any insurer's adjuster and a claimant fail to agree as to the amount of the insured loss or damage sustained by the claimant and if so provided for in the insurer's bylaws, the matter shall be submitted to three persons as a committee of reference, one of whom shall be selected by the claimant, one by the insurer, and the third by such two persons, all of whom shall be sworn to a faithful and impartial investigation and award.

(2) The committee of reference shall have authority to examine witnesses and determine all matters in dispute. The decision or award of the committee shall be made in writing to the secretary of the insurer. If it relates to any claimed loss or damage to a crop, the decision or award shall not be made until after maturity of such crop. The decision or award of the committee shall be final and binding upon all parties, unless an interested party appeals to the court within 30 days thereafter.

(3) The compensation of each member of any such committee shall be at the rate of $10 per day for each day of service in the discharge of his duties. Such compensation shall be paid by the claimant, unless the award of the committee exceeds the sum theretofore offered by the insurer in settlement of the claim and in which case the compensation shall be paid by the insurer.

History: En. Sec. 515, Ch. 286, L. 1959; R.C.M. 1947, 40-4848.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

33-4-412. Obligations or assessments due — losses payable. (1) Obligations or assessments of members for losses and expenses become due and payable at such time as may be provided in the bylaws of the insurer, and the insurer shall use due diligence to collect each obligation or assessment.

(2) Any valid claim for an insured loss against an insurer transacting business on the assessment plan shall not be payable by the insurer until 30 days after such obligations of the members are due and payable.

History: En. Sec. 516, Ch. 286, L. 1959; R.C.M. 1947, 40-4849.

33-4-413. Suit to collect obligations — liability of directors or officers. (1) An insurer may institute a suit against any member of such insurer if the member fails to pay when due any obligation or liability of the member given such insurer under the provisions of this chapter.

(2) The directors or officers of an insurer are liable in their individual capacity to the person sustaining an insured loss if they willfully refuse or neglect to perform the duties imposed upon them by the provisions of this section.

History: En. Sec. 517, Ch. 286, L. 1959; R.C.M. 1947, 40-4850.

33-4-414. Proportionate payment of losses. If the aggregate whole amount of the members' obligations to an insurer transacting business on the assessment plan are insufficient to pay all valid claims for losses under the insurer's contracts of insurance after necessary expenses in any one year, then such claimants insured by the insurer shall receive their proportionate share of the funds realized from such obligations in full satisfaction of such losses.

History: **En. Sec. 518, Ch. 286, L. 1959; R.C.M. 1947, 40-4851.**

33-4-415. Suit to collect for loss. If the insurer fails to pay any insured loss when due, an action may be maintained against it to collect for such loss, but subject to 33-4-414 as to assessment plan insurers.

History: **En. Sec. 519, Ch. 286, L. 1959; R.C.M. 1947, 40-4852.**

Part 5

Insurance Operations

33-4-501. Insuring powers in general. (1) In respect to property insurance as defined in 33-1-210, a farm mutual insurer shall insure against loss or damage by fire or other casualty only:

(a) rural dwellings and buildings, including the usual contents, farm livestock, machinery, vehicles, growing crops, and other forms of farm property owned by a member of the insurer or by the member's spouse;

(b) residential dwellings, appurtenant structures, and personal property owned by a member of the insurer or by the member's spouse and located:

(i) outside the boundaries of an incorporated city or town; or

(ii) in an incorporated city or town with a population of less than 15,000;

(c) dwellings and related buildings designed for occupancy by not over two families, together with the usual contents, situated in an incorporated city or town with a population of 15,000 or more, but only if the property is owned by a member of the insurer or by the member's spouse and the member has other insurance of rural property with the insurer;

(d) rural schoolhouses and buildings used in connection with the schoolhouse, rural community houses, rural churches, or other rural public buildings.

(2) A farm mutual insurer may insure against the liability risks provided in 33-1-206(1)(b) only to the extent of the limit of risks provided in 33-4-502(3) and only if every policy bears on its face in boldface type a statement that each member of the farm mutual insurer is subject to a contingent liability under 33-3-411.

(3) Except as provided in subsection (1)(d), an insurer may not insure any property not owned by a member or by the member's spouse.

(4) An insurer may not insure any property situated within the limits of an incorporated city or town except as provided in subsections (1)(b)(ii), (1)(c), and (5) and may not insure the property unless it has and maintains the surplus funds as required under 33-4-401.

(5) An insurer may continue to insure property situated within the limits of an incorporated city or town with a population of 15,000 or more if the insured obtained coverage when the incorporated city or town had a population of less than 15,000.

History: **En. Sec. 470, Ch. 286, L. 1959; R.C.M. 1947, 40-4803; amd. Sec. 2, Ch. 28, L. 1987; amd. Sec. 2, Ch. 334, L. 1993; amd. Sec. 1, Ch. 281, L. 1995.**

33-4-502. Limit of risk — retention of liability. (1) Except as provided in subsection (3), the maximum amount of insurance that an insurer shall retain on a single risk, after deduction of applicable reinsurance, may not exceed 10% of the admitted assets of the insurer or $50,000, whichever is the larger amount.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer that are reasonably susceptible to loss or damage from the same fire or the same occurrence of another hazard insured against.

(3) A farm mutual insurer:

(a) that insures any portion of a liability risk shall maintain a surplus of at least $50,000;

(b) that retains any portion of a liability risk shall obtain reinsurance on that liability insurance with an insurer authorized to do business in this state, and the farm mutual insurer's maximum aggregate liability for incurred losses on liability coverage retained for any calendar year or contract year may not exceed the smaller of $200,000 or 20% of the farm mutual insurer's surplus as of December 31 of the preceding year; and

(c) may not retain liability risk or risk resulting from insuring growing crops against loss or damage from hail or other hazards greater than the proportional share of each limit of liability in the following schedule:

Surplus as of the Preceding December 31:	Proportional Share of Each Limit of Liability Retained:
$1,000,000 or greater	15%
$800,000 to $999,999	12%
$600,000 to $799,999	9%
$400,000 to $599,999	6%
$200,000 to $399,999	3%
Under $200,000	0

History: En. Sec. 471, Ch. 286, L. 1959; amd. Sec. 1, Ch. 259, L. 1967; amd. Sec. 1, Ch. 94, L. 1975; R.C.M. 1947, 40-4804; amd. Sec. 1, Ch. 319, L. 1979; amd. Sec. 1, Ch. 132, L. 1981; amd. Sec. 3, Ch. 28, L. 1987; amd. Sec. 3, Ch. 158, L. 1997.

33-4-503. Reinsurance. A farm mutual insurer may cede reinsurance to any other farm mutual insurer or insurers and to other authorized property insurers and may accept reinsurance from other farm mutual insurers.

History: En. Sec. 472, Ch. 286, L. 1959; R.C.M. 1947, 40-4805.

Cross-References

Reinsurance — general provisions, Title 33, ch. 2, part 12.

33-4-504. Cash premium or assessment plans. (1) An insurer may transact business either on the cash premium plan altogether or on the assessment plan altogether, whichever plan is provided for in its articles of incorporation or bylaws.

(2) If transacting business on the cash premium plan, the insurer shall collect from each member before or at the time of effectuation of the member's insurance the premium in cash in such amount as the insurer deems will be adequate to cover losses and expenses incurred during the term of such insurance.

(3) If transacting business on the assessment plan, the insurer will depend for the payment of losses and expenses principally upon assessments from time to time levied upon members either before or after such losses or expenses have been incurred. This provision shall not be construed, however, as preventing any such insurer from collecting from each member such initial amount as it may deem proper prior to or at the time of the effectuation of the member's insurance; nor shall it be deemed to prohibit the acquisition, accumulation, and maintenance of surplus or unallocated funds.

(4) An insurer transacting business on the cash premium plan may nevertheless provide in its bylaws and policies for special assessment of its members in event the cash premium charged is found by it to be inadequate to pay in full losses and expenses currently incurred. The bylaws shall provide a specific limitation as to the amount which can be so assessed in any one policy year, such amount to be not less than one or more than six times the premium charged on each member's policy at the annual rate for a term of 1 year.

History: **En. Sec. 473, Ch. 286, L. 1959; R.C.M. 1947, 40-4806.**

33-4-505. Certificate of authority required — issuance — continuation — fee. (1) A farm mutual insurer may not insure any risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

(2) Upon application, the commissioner shall issue a certificate of authority to every insurer qualified under this chapter.

(3) Every certificate of authority continues in force as long as the farm mutual insurer is entitled under this chapter and until suspended, revoked, or otherwise terminated; subject, however, to continuance of the certificate by the farm mutual insurer each year by payment before May 15 of the continuation fee of $10 if a county mutual insurer or $25 if a state mutual insurer, to be deposited by the commissioner with the state treasurer to the credit of the state general fund.

(4) If the farm mutual insurer does not continue its certificate of authority in accordance with subsection (3), its certificate of authority expires at midnight on May 31 next following its failure to continue it in force. The commissioner shall promptly notify a farm mutual insurer that has not continued its certificate of authority of the impending expiration of its certificate of authority.

(5) A certificate of authority is subject to suspension or revocation by the commissioner for violation of or noncompliance with any provision of this chapter or referred to in this chapter.

(6) The commissioner may reinstate a certificate of authority that a farm mutual insurer has inadvertently permitted to expire, after the farm mutual insurer has fully cured all failures that resulted in the expiration and upon payment by the farm mutual insurer of the current continuation fee as provided in subsection (3). If a certificate is not reinstated, the commissioner may grant a farm mutual insurer another certificate of authority only after the farm mutual insurer files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(7) The commissioner may amend a certificate of authority at any time to accord with changes in the farm mutual insurer's charter of insuring powers.

History: **En. Sec. 483, Ch. 286, L. 1959; R.C.M. 1947, 40-4816; amd. Sec. 2, Ch. 327, L. 1987; amd. Sec. 7, Ch. 316, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 316 in (6) near end of first sentence after "insurer of" deleted "the fee for reinstatement as provided in 33-2-708 in addition to"; and made minor changes in style. Amendment effective January 1, 2000.

Cross-References

Contested case administrative hearings, 2-4-102.

33-4-506. Members — minimum membership. (1) No person may become a member of a farm mutual insurer except by insuring therein property owned by him so insurable under this chapter.

(2) The membership of such an insurer shall consist of the persons lawfully insuring therein.

(3) The total membership of the insurer shall at all times be not less than the number of persons required by 33-4-201 to incorporate such an insurer.

History: **En. Sec. 487, Ch. 286, L. 1959; R.C.M. 1947, 40-4820.**

33-4-507. Withdrawal of member — cancellation by insurer. (1) Any member of an insurer may withdraw therefrom by surrendering his policy to the insurer for cancellation and paying all obligations then owing by him to the insurer.

(2) The insurer has power to cancel the policy of any member for any cause deemed adequate by the insurer and upon not less than 10 days' written notice in advance of cancellation delivered to the member or mailed to his address last of record with the insurer.

History: **En. Sec. 493, Ch. 286, L. 1959; R.C.M. 1947, 40-4826.**

33-4-508. Application for insurance. All persons desiring insurance shall make written application therefor to the insurer. If the insurer is transacting business on the assessment plan, the applicant shall at the time of application give his obligation to the insurer for the payment of losses and expenses as provided in the insurer's bylaws and make such advance payment in cash as insurer may require.

History: **En. Sec. 510, Ch. 286, L. 1959; R.C.M. 1947, 40-4843.**

33-4-509. Application and policy forms filed with commissioner. All forms of application for insurance and of policies proposed to be used by an insurer shall be filed with the commissioner at least 30 days in advance of any such use. The commissioner shall disapprove any such form found by him to be unlawful, illegible, or misleading. An insurer shall not use any such form after it has received the commissioner's notice of disapproval setting forth the reasons therefor.

History: **En. Sec. 511, Ch. 286, L. 1959; R.C.M. 1947, 40-4844.**

Cross-References

Contested case administrative proceedings, 2-4-102.

33-4-510. Rates — filing — discrimination. (1) A farm mutual insurer is not required to file any of its insurance rates with the commissioner. No such rate shall be unfairly discriminatory as between subjects of insurance covered for like perils under like policies and having substantially the same insuring, exposure, and underwriting characteristics.

(2) Notwithstanding any provision of subsection (1) or chapter 18, part 2, of this title, a farm mutual insurer transacting insurance under this chapter may refuse to renew a casualty or liability policy upon nonpayment of dues to the farm mutual insurer if payment of dues is a condition for obtaining or continuing such insurance.

History: **En. Sec. 512, Ch. 286, L. 1959; R.C.M. 1947, 40-4845; amd. Sec. 1, Ch. 319, L. 1981.**

33-4-511. Insurance of schools, community houses, and churches. (1) A contract of insurance effected upon the property of any school district, rural community house, rural church, or rural public building pursuant to 33-4-501 does not constitute the school district or the owners of the community house, church, or public building a member of the insurer.

(2) A contract of insurance effected upon any rural school building, rural community house, rural church, or other rural public building referred to in 33-4-501(1)(d) is not invalid because the directors or any director or officer of the insurer at the time of effecting the insurance coverage was a trustee, director, insurance producer, custodian, or manager or in any way in control, supervision, or management of any or all of the property insured.

History: **En. Sec. 513, Ch. 286, L. 1959; R.C.M. 1947, 40-4846; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 144, Ch. 42, L. 1997.**

CHAPTER 5

RECIPROCAL INSURERS

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Part 1

General Provisions

33-5-101. Scope of chapter — existing insurers. (1) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

(2) Existing authorized reciprocal insurers shall after January 1, 1961, comply with the provisions of this chapter and shall make such amendments to their subscribers' agreement, power of attorney, policies, and other documents and accounts and perform such other acts as may be required for such compliance.

History: En. Sec. 540, Ch. 286, L. 1959; R.C.M. 1947, 40-5003.

33-5-102. Definitions. (1) "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers", of reciprocal agreements of indemnity, the interexchange being effectuated through an attorney-in-fact common to all such persons.

(2) A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact to provide reciprocal insurance among themselves.

History: En. Secs. 538, 539, Ch. 286, L. 1959; R.C.M. 1947, 40-5001, 40-5002.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

33-5-103. Name — suits. A reciprocal insurer shall:

(1) have and use a business name. The name shall include the word "reciprocal", "interinsurer", "interinsurance", "exchange", "underwriters", or "underwriting".

(2) sue and be sued in its own name.

History: En. Sec. 542, Ch. 286, L. 1959; R.C.M. 1947, 40-5005.

33-5-104. Attorney — not doing business. (1) "Attorney", as used in this chapter, refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign firms or corporations.

History: En. Sec. 543, Ch. 286, L. 1959; R.C.M. 1947, 40-5006.

Part 2
Formation

33-5-201. Organization of reciprocal insurer. (1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the commissioner for a certificate of authority to transact insurance.

(2) The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner when applying for a certificate of authority a declaration setting forth:

(a) the name of the insurer;

(b) the location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;

(c) the kinds of insurance proposed to be transacted;

(d) the names and addresses of the original subscribers;

(e) the designation and appointment of the proposed attorney and a copy of the power of attorney;

(f) the names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;

(g) the powers of the subscribers' advisory committee and the names and terms of office of the members thereof;

(h) that all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(i) a copy of the subscribers' agreement;

(j) a statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the commissioner;

(k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by 33-5-401 is on hand; and

(l) a copy of each policy, endorsement, and application form it then proposes to issue or use.

(3) The declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

History: En. Sec. 545, Ch. 286, L. 1959; R.C.M. 1947, 40-5008; amd. Sec. 15, Ch. 198, L. 1979.

Cross-References

Certificate of authority, 33-5-502.

33-5-202. Merger or conversion. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with 33-5-411 and a reasonable length of time within which to exercise such right.

History: En. Sec. 564, Ch. 286, L. 1959; R.C.M. 1947, 40-5027.

Cross-References

Contested case administrative proceedings, 2-4-102.

Hearings by Commissioner, 33-1-313.

Part 3

Management

33-5-301. Power of attorney. (1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

(a) the powers of the attorney;

(b) that the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;

(c) the general services to be performed by the attorney;

(d) the maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses to be paid by the insurer; and

(e) except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than 1 or more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective as to a domestic reciprocal insurer until approved by the commissioner.

History: En. Sec. 547, Ch. 286, L. 1959; R.C.M. 1947, 40-5010.

Cross-References

Power of attorney — agency generally, Title 28, ch. 10.

33-5-302. Modifications. Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively or as to any insurance contract issued prior thereto.

History: En. Sec. 548, Ch. 286, L. 1959; R.C.M. 1947, 40-5011.

33-5-303. Attorney's bond. (1) Concurrently with the filing of the declaration provided for in 33-5-201, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in subsection (2) hereof. The bond shall be executed by the attorney and by an authorized corporate surety and shall be subject to the commissioner's approval.

(2) The bond shall be in the penal sum of $25,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands and that he will not withdraw or appropriate to his own use from the funds of the insurer any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given both the attorney and the commissioner.

History: En. Sec. 549, Ch. 286, L. 1959; R.C.M. 1947, 40-5012.

Cross-References

Surety bonds, Title 28, ch. 11, part 4.

Suretyship, Title 33, ch. 26.

33-5-304. Action on bond. Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

History: En. Sec. 550, Ch. 286, L. 1959; R.C.M. 1947, 40-5013.

33-5-305. Subscribers' advisory committee — duties. (1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than two-thirds of such committee shall be subscribers other than the attorney or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

(a) supervise the finances of the insurer;

(b) supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;

(c) procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and

(d) have such additional powers and functions as may be conferred by the subscribers' agreement.

History: En. Sec. 555, Ch. 286, L. 1959; R.C.M. 1947, 40-5018.

Part 4
Finance

33-5-401. Surplus funds required. (1) A domestic reciprocal insurer subject to this part, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and maintains surplus funds as follows:

(a) to transact property insurance, surplus funds of not less than $400,000;

(b) to transact casualty insurance:

(i) including authority for workers' compensation insurance, surplus funds of not less than $600,000; or

(ii) excluding authority for workers' compensation insurance, surplus funds of not less than $400,000.

(2) In addition to surplus funds required to be maintained under subsection (1), the insurer must have, when first authorized, expendable surplus in the same amount as required of a like foreign reciprocal insurer under 33-2-110.

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code for the additional kinds of insurance and maintains surplus funds in an amount equal to the minimum capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance.

History: En. Sec. 544, Ch. 286, L. 1959; R.C.M. 1947, 40-5007; amd. Sec. 1, Ch. 307, L. 1979; amd. Sec. 37, Ch. 379, L. 1995.

Cross-References

Casualty insurance — definition, 33-1-206.

Property insurance — definition, 33-1-210.

33-5-402. Contributions to insurer. The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms funds that it may require from time to time in its operations. Sums advanced may not be treated as a liability of the insurer. Except upon liquidation of the insurer, during any calendar year, the total of withdrawals and repayments of the advanced sums may not exceed the lesser of the insurer's realized earned surplus or 10% of the sums advanced as of the previous December 31. A withdrawal or repayment may not be made without the advance approval of the commissioner. This section does not apply to bank loans or to loans for which security is given.

History: En. Sec. 552, Ch. 286, L. 1959; R.C.M. 1947, 40-5015; amd. Sec. 19, Ch. 531, L. 1997; amd. Sec. 23, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 near middle of third sentence before "realized" substituted "insurer's" for "insured's". Amendment effective October 1, 1999.

33-5-403. Financial condition — method of determining. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for 90 days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than 90 days shall be allowed as assets.

(5) An assessment levied upon subscribers and not collected shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

History: En. Sec. 553, Ch. 286, L. 1959; R.C.M. 1947, 40-5016.

33-5-404. Subscribers' liability. (1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several, and proportionate liability, and not joint.

(2) Except as to a nonassessable policy each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than 1 or more than 10 times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in 33-5-406.

(3) Each assessable policy issued by the insurer shall contain a statement of the contingent liability.

History: En. Sec. 556, Ch. 286, L. 1959; R.C.M. 1947, 40-5019.

33-5-405. Subscribers' liability on judgment. (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for 30 days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

History: En. Sec. 557, Ch. 286, L. 1959; R.C.M. 1947, 40-5020.

33-5-406. Assessments. (1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner or by the commissioner in liquidation of the insurer.

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as stated in accordance with 33-5-404, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or losses payable.

History. En. Sec. 558, Ch. 286, L. 1959; R.C.M. 1947, 40-5021.

33-5-407. Time limit for assessments. Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) while his policy is in force or within 1 year after its termination, he is notified by either the attorney or the commissioner of his intentions to levy such assessment; or

(2) an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while his policy is in force or within 1 year after its termination.

History: En. Sec. 559, Ch. 286, L. 1959; R.C.M. 1947, 40-5022.

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-5-408. Aggregate liability. No one policy or subscriber as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

History: En. Sec. 560, Ch. 286, L. 1959; R.C.M. 1947, 40-5023.

33-5-409. Nonassessable policies. (1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it; except that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

History: En. Sec. 561, Ch. 286, L. 1959; R.C.M. 1947, 40-5024.

Cross-References

Contested case administrative hearings, 2-4-102.

Hearings by Commissioner, 33-1-313.

33-5-410. Distribution of savings. A reciprocal insurer may from time to time return to its subscribers any unused premiums, savings, or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks or policies or between subscribers, but this shall not prevent retrospective rating, distribution on a retrospective plan, or distribution varying as to classes of subscribers based on the experience of such subscribers.

History: En. Sec. 562, Ch. 286, L. 1959; R.C.M. 1947, 40-5025.

33-5-411. Subscribers' share in assets. Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in 33-5-402, and the return of any unused premium, savings, or credits then standing on subscribers' accounts shall be distributed to its subscribers who were such within the 12 months prior to the last termination of its certificate of authority, according to such reasonable formula as the commissioner may approve.

History: En. Sec. 563, Ch. 286, L. 1959; R.C.M. 1947, 40-5026.

33-5-412. Impaired reciprocals. (1) If the assets of a reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency, but subject to the limitation set forth in the power of attorney or policy.

(2) If the attorney fails to make up such deficiency or to make the assessment within 30 days after the commissioner orders him to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscriber for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons but including the reasonable cost of the liquidation.

History: En. Sec. 565, Ch. 286, L. 1959; R.C.M. 1947, 40-5028.

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-5-413. Annual statement. (1) The annual statement of a reciprocal insurer shall be made and filed by its attorney.

(2) The statement shall be supplemented by such information as may be required by the commissioner relative to the affairs and transactions of the attorney insofar as they relate to the reciprocal insurer.

History: En. Sec. 551, Ch. 286, L. 1959; R.C.M. 1947, 40-5014.

Part 5

Insurance Operations

33-5-501. Insuring powers of reciprocals. (1) A reciprocal insurer may, upon qualifying therefor as provided for by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) Such an insurer may purchase reinsurance and may grant reinsurance as to any kind of insurance it is authorized to transact.

History: En. Sec. 541, Ch. 286, L. 1959; R.C.M. 1947, 40-5004.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

Reinsurance — general provisions, Title 33, ch. 2, part 12.

33-5-502. Certificate of authority. (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner may refuse, suspend, or revoke the certificate of authority, in addition to other grounds therefor, for failure of the attorney to comply with any provision of this code.

History: En. Sec. 546, Ch. 286, L. 1959; R.C.M. 1947, 40-5009.

Cross-References

Revocation or suspension of certificate of authority — generally, 33-2-118, 33-2-119.

33-5-503. Eligible subscribers — liability of representative. (1) Individuals, partnerships, and corporations of this state may make application, enter into agreement for, hold policies or contracts in or with, and be a subscriber of any domestic, foreign, or alien reciprocal insurer. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurer. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations.

(2) Government or governmental agencies, state or political subdivisions thereof, boards, associations, estates, trustees, or fiduciaries are authorized to exchange nonassessable reciprocal interinsurance contracts with each other and with individuals, partnerships, and corporations to the same extent that individuals, partnerships, and corporations are herein authorized to exchange reciprocal interinsurance contracts.

(3) Any officer, representative, trustee, receiver, or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity.

History: En. Sec. 554, Ch. 286, L. 1959; R.C.M. 1947, 40-5017.

CHAPTER 6

BENEVOLENT ASSOCIATIONS

Part 1 — General Provisions

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33-6-103. New benevolent associations prohibited — foreign associations.
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33-6-301. Receipts for payment to association.
33-6-302. Expenses — assessment for expenses — shown in annual statement.
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33-6-401. Continuous certificate of authority — fee — evidence.
33-6-402. Insurance producers — license.
33-6-403. Officers as insurance producers.
33-6-404. Minimum membership.
33-6-405. Payment of death claims.

Part 1

General Provisions

33-6-101. Scope of chapter — provisions applicable. (1) This chapter applies only to benevolent associations.

(2) The provisions of this title do not apply to any benevolent association unless contained or referred to in this chapter.

(3) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to benevolent associations, to the extent applicable, as follows: parts 1, 2, 3, 4, 5, and 7 of chapter 1; 33-1-601 through 33-1-603; 33-2-101; 33-2-107; 33-2-112; 33-2-117 through 33-2-121; 33-2-501; 33-2-502; chapter 2, part 13; 33-2-1207; 33-3-308; 33-3-401; 33-3-402; 33-3-436; 33-12-105; chapter 15; chapter 18; 33-22-304; and 33-22-506.

History: (1), (2)En. Sec. 521, Ch. 286, L. 1959; Sec. 40-4901, R.C.M. 1947; (3)En. Sec. 537, Ch. 286, L. 1959; amd. Sec. 1, Ch. 297, L. 1971; Sec. 40-4917, R.C.M. 1947; R.C.M. 1947, 40-4901, 40-4917; amd. Sec. 141, Ch. 575, L. 1981; amd. Sec. 45, Ch. 304, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 304 in (3) deleted reference to 33-2-804 and inserted reference to 33-12-105; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

33-6-102. Definitions. (1) (a) Any corporation, association, or society, or by whatever name called, which issues any certificate, policy, membership agreement, or makes any promise or agreement with its members whereby, upon decease of a member, any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by such corporation, association, or society to his legal representatives or to the beneficiary designated by him, which money, benefit, charity, aid, or relief is derived from voluntary donations or from admission fees, dues, or assessments or any of them collected or to be collected from the members thereof or members of a class therein or interest or accretions thereon or accumulations thereof; and wherein the money or other benefit, charity, aid, or relief so realized is applied to or accumulated for the uses and purposes herein specified and/or the uses of such corporation, association, or society and/or the expenses of management and prosecution of its business, shall be deemed to be a "benevolent association" for the purposes of this chapter.

(b) The definition of benevolent association in subsection (1)(a) above is not applicable to:

(i) burial or death benefits, annuities, endowments, or any other benefit payments of any legal reserve life or disability insurer or of any labor union, railroad brotherhood, or lodge having as a primary business the improvement of working conditions;

(ii) any auxiliaries to any labor union, railroad brotherhood, or lodge referred to in subsection (1)(b)(i); or

(iii) the benevolent plans within fraternal orders if limited to members and if the plan is not the principal object for the formation or continuance of the fraternal order.

(2) A "member" or "member in good standing" is an individual who must contribute to a benevolent association upon notice of assessment.

(3) (a) "Membership contract" is any certificate, policy, membership agreement, by whatever name called, or any promise or agreement of a benevolent association with any or all of its members, whereby any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by such association upon the decease of a member to his legal representatives or to the beneficiary or beneficiaries designated by him.

(b) There shall be one contributing member for each membership contract, but a membership contract may cover more than one individual.

(4) "Officer" is any of the individuals having supervision and control of a benevolent association and engaging in the management and the prosecution of the business thereof, whether designated as officers, trustees, comptrollers, managers, or by whatever name called.

History: (1)En. Sec. 522, Ch. 286, L. 1959; amd. Sec. 20, Ch. 535, L. 1975; Sec. 40-4902, R.C.M. 1947; (2) thru (4)En. Secs. 523, 524, 525, Ch. 286, L. 1959; Secs. 40-4903, 40-4904, 40-4905, R.C.M. 1947; R.C.M. 1947, 40-4902, 40-4903, 40-4904, 40-4905.

33-6-103. New benevolent associations prohibited — foreign associations. (1) No benevolent association shall transact or be authorized to transact any business in this state unless it lawfully had authority to transact such business as such an association immediately prior to January 1, 1961.

(2) No new benevolent association shall hereafter be organized or formed in this state.

(3) No association formed or existing under the laws of any other state or jurisdiction shall be authorized to transact business in this state.

History: En. Sec. 526, Ch. 286, L. 1959; R.C.M. 1947, 40-4906.

33-6-104. Amendments filed with commissioner. Each benevolent association shall promptly file with the commissioner a copy, certified to by its president and secretary, of each of the following:

(1) if incorporated, any amendment of articles of incorporation or of bylaws;

(2) if not incorporated, any amendment of articles of association, of agreement, or of rules or agreements with its members;

(3) any modification of its form of membership contracts.

History: En. Sec. 527, Ch. 286, L. 1959; R.C.M. 1947, 40-4907.

Part 2

Management

33-6-201. Officers — number — bond. (1) Each benevolent association shall be in the charge of its officers and shall not have more than five officers.

(2) The treasurer and any other officer having charge of any funds of a benevolent association shall each be bonded in the amount of $1,000, executed to the state of Montana, joint and several, for the use and benefit of the members or beneficiaries of such association. Each such bond shall be on file in the principal office and address of the association, and a certified copy thereof must be filed with the commissioner.

History: En. Sec. 528, Ch. 286, L. 1959; R.C.M. 1947, 40-4908.

Cross-References

Surety bonds — general provisions, Title 28, ch. 11, part 4.

Suretyship, Title 33, ch. 26.

Part 3

Finance

33-6-301. Receipts for payment to association. Every benevolent association shall issue a receipt or other evidence of payment to each person making a payment of any kind to the association.

History: En. Sec. 531, Ch. 286, L. 1959; R.C.M. 1947, 40-4911.

33-6-302. Expenses — assessment for expenses — shown in annual statement. (1) The total expenses of any benevolent association during any calendar year shall not exceed the larger of the following:

(a) 20% of the total amount received during such year, whether as assessments, dues, donations, or by whatever name called, except fees collected for new memberships; or

(b) $15 per death loss incurred during such year.

(2) Such an association may, instead of providing for expenses as in subsection (1) above, assess each of its members for expenses at an amount not to exceed $3 per calendar year, except that such assessment shall not exceed $4 per year where a membership certificate includes within its protection a family group consisting of two or more persons. The proceeds of such assessments shall be placed in an expense fund out of which all of the expenses of the association for such year shall be paid. The association shall show the condition of such expense fund in its annual statement.

(3) The association shall state in its annual statement whether the expenses as to be shown in its next annual statement will be determined as in subsection (1) above or whether the members will be assessed for the same as in subsection (2) above. No association shall use both methods or a combination of such methods.

History: En. Sec. 533, Ch. 286, L. 1959; amd. Sec. 1, Ch. 224, L. 1975; R.C.M. 1947, 40-4913.

33-6-303. Assessment for death benefit — notice — procedure. (1) Within 30 days after a benevolent association receives a completed proof of claim for death of a member, it must mail to each of its members in good standing an assessment notice stating:

(a) the name, date, and place of death of the deceased member;

(b) the number of the proof of death claim assigned thereto by the association;

(c) the amount of the assessment and the expiration date of the assessment payment; and

(d) the number of members in good standing to whom such notices are being sent, as computed from the last completed assessment.

(2) At the time of mailing the assessment notice required by (1) above, the association shall send a duplicate thereof to the commissioner for filing, together with information as to the mailing of the notice to members.

History: En. Sec. 535, Ch. 286, L. 1959; R.C.M. 1947, 40-4915.

33-6-304. Annual statement. (1) In addition to compliance with 33-2-701, the annual statement of a benevolent association shall exhibit the following items and facts:

(a) the name and business address of the association;

(b) the names and addresses of the officers of the association;

(c) the number of membership contracts in force at the commencement of the year and the number of memberships in good standing at the close of the year for which the statement is made. This provision is also applicable to each subgroup or class, if any, of the association.

(d) the number of death losses claimed; the number and total amount of death losses paid; the number of death claims compromised, denied, or resisted, and reasons therefor;

(e) the number of assessments in the association and in each subgroup or class, if any; the amount collected in each such assessment; income to the benevolent association from all other sources; and all other fees, assessments, donations, of any kind or nature, except new membership fees from new members;

(f) the expenses actually incurred during the year; debts unpaid at the commencement of the year; debts and obligations of any kind (not including death losses actually paid) incurred during the year; debts unpaid at the close of the year; a breakdown of expenses to show the amount paid in salaries or commissions, office expense, and other expenses, in those cases where members of the benevolent association are assessed for operating expenses of such association;

(g) whether the association has complied with all of the provisions of 33-6-302 and 33-6-405;

(h) the information required by 33-6-302.

(2) Two officers of the association shall attest under oath to the truth of the facts contained in the annual statement. At least one of such officers must have charge of making up the statement.

History: En. Sec. 536, Ch. 286, L. 1959; R.C.M. 1947, 40-4916; amd. Sec. 2, Ch. 337, L. 1987.

Part 4
Insurance Operations

33-6-401. Continuous certificate of authority — fee — evidence. (1) A benevolent association may not insure a risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

(2) A benevolent association's certificate of authority continues in force as long as the benevolent association is entitled to it under this chapter and until suspended, revoked, or otherwise terminated; subject, however, to continuance of the certificate by the benevolent association each year by payment before May 15 of the continuation fee of $25, to be deposited by the commissioner with the state treasurer to the credit of the state general fund.

(3) If a benevolent association does not continue its certificate of authority in accordance with subsection (2), its certificate of authority expires at midnight on May 31 next following its failure to continue it in force. The commissioner shall promptly notify a benevolent association that has not continued its certificate of authority of the impending expiration of its certificate of authority.

(4) The commissioner may in his discretion reinstate a certificate of authority that a benevolent association has inadvertently permitted to expire, after the benevolent association has fully cured all failures that resulted in the expiration and upon payment by the benevolent association of a $25 fee for reinstatement in addition to the current continuation fee as provided in subsection (2). If a certificate is not reinstated, the commissioner may grant a benevolent association another certificate of authority only after the benevolent association files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(5) The commissioner may amend a certificate of authority at any time to accord with changes in the benevolent association's charter of insuring powers.

(6) A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a benevolent association within the meaning of this chapter.

History: En. 40-4918 by Sec. 2, Ch. 297, L. 1971; R.C.M. 1947, 40-4918(part); amd. Sec. 3, Ch. 327, L. 1987.

33-6-402. Insurance producers — license. Insurance producers for any benevolent association may be appointed in accordance with chapter 17 and shall be subject to the applicable provisions of such chapter, except as provided in 33-6-403. No such insurance producer may be appointed if there are less than three officers in charge of the association.

History: En. Sec. 529, Ch. 286, L. 1959; R.C.M. 1947, 40-4909; amd. Sec. 146, Ch. 575, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-6-403. Officers as insurance producers. Not exceeding five officers of any benevolent association may act for the association without obtaining a license as an insurance producer. Such officers shall be subject to the jurisdiction of the commissioner in the same manner as though they were licensed as insurance producers under chapter 17.

History: En. Sec. 530, Ch. 286, L. 1959; R.C.M. 1947, 40-4910; amd. Sec. 1, Ch. 713, L. 1989.

33-6-404. Minimum membership. Each benevolent association shall have at all times not less than 200 members in good standing.

History: En. Sec. 532, Ch. 286, L. 1959; R.C.M. 1947, 40-4912.

33-6-405. Payment of death claims. (1) Each completed proof of claim for death of a member of a benevolent association shall be assigned a number by the association in consecutive order of receipt for each calendar year.

(2) Payment in full on final settlement of death benefits shall be made by the association to the legal heir or heirs or the designated beneficiary or beneficiaries within 20 days after the expiration date stated in the association's notice referred to in 33-6-303(1)(c).

History: En. Sec. 534, Ch. 286, L. 1959; R.C.M. 1947, 40-4914.

CHAPTER 7

FRATERNAL BENEFIT SOCIETIES

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Chapter Cross-References

Comprehensive health association and plan, Title 33, ch. 22, part 15.

Part 1

General Provisions

33-7-101 through 33-7-104. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-101. En. Secs. 617, 672, Ch. 286, L. 1959; R.C.M. 1947, 40-5304, 40-5359; amd. Sec. 141, Ch. 575, L. 1981; amd. Sec. 2, Ch. 139, L. 1987; amd. Sec. 15, Ch. 713, L. 1989.

33-7-102. (1), (2)En. Sec. 614, Ch. 286, L. 1959; Sec. 40-5301, R.C.M. 1947; (3)En. Sec. 615, Ch. 286, L. 1959; Sec. 40-5302, R.C.M. 1947; (4)En. Sec. 616, Ch. 286, L. 1959; Sec. 40-5303, R.C.M. 1947; R.C.M. 1947, 40-5301, 40-5302, 40-5303.

33-7-103. En. Sec. 645, Ch. 286, L. 1959; R.C.M. 1947, 40-5332.

33-7-104. En. Sec. 618, Ch. 286, L. 1959; amd. Sec. 21, Ch. 535, L. 1975; R.C.M. 1947, 40-5305.

33-7-105. Fraternal benefit societies. Any incorporated or unincorporated society, order, or supreme lodge, without capital stock, including a society exempted under the provisions of 33-7-126(1)(b), that is conducted solely for the benefit of its members and their beneficiaries and not for profit, that is operated on a lodge system with ritualistic forms of work, that has a representative form of government, and that provides benefits in accordance with this chapter, is a fraternal benefit society.

History: En. Sec. 1, Ch. 586, L. 1991.

33-7-106. Lodge system. (1) A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its laws, rules, and ritual. Subordinate lodges must be required by the laws of the society to hold regular meetings at least once a month in furtherance of the purposes of the society.

(2) A society may organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges may not be required of children, and children may not have a voice or vote in the management of a society.

History: En. Sec. 2, Ch. 586, L. 1991.

33-7-107. Representative form of government. (1) A society has a representative form of government if it has a supreme governing body organized as provided in subsection (2) or (3).

(2) (a) The supreme governing body may be an assembly composed of delegates who meet the criteria of subsection (5) and who are elected either by the members directly or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail.

(b) The delegates elected must be a majority of delegates and may not have less than a majority of the votes and not less than the number of votes required to amend the society's laws. The assembly must be elected and shall meet at least once every 4 years and shall elect a board of directors to conduct the business of the society between meetings of the assembly.

(c) Vacancies on the board of directors may be filled in the manner prescribed by the society's laws.

(3) (a) (i) The supreme governing body may be:

(A) a board composed of persons who meet the criteria of subsection (5) and who are elected by the members, either directly or by their representatives in intermediate assemblies; and

(B) any other persons prescribed in the society's laws.

(ii) A society may provide for election of the board by mail.

(b) The term of a board member may not exceed 4 years. Vacancies on the board may be filled in the manner prescribed in the society's laws.

(c) The persons elected to the board must be a majority of the board and may not be less than the number of votes required to amend the society's laws. A person filling an unexpired term of an elected board member is considered to be an elected board member.

(d) The board shall meet at least quarterly to conduct the business of the society.

(4) The officers of the society must be elected either by the assembly or by the board of directors, either of which constitutes the supreme governing body.

(5) Only benefit members are eligible for election to the assembly, the board of directors, or an intermediate assembly.

(6) Each voting member shall have one vote. A vote may not be cast by proxy.

History: En. Sec. 3, Ch. 586, L. 1991.

33-7-108. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Benefit contract" means the agreement for provision of authorized benefits described in 33-7-520.

(2) "Benefit member" means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

(3) "Certificate" means the document issued as written evidence of the benefit contract.

(4) "Laws" means the society's articles of incorporation, charter, constitution, and bylaws.

(5) "Lodge" means subordinate member units of the society, known as camps, courts, councils, or branches or by any other designation.

(6) "Premiums" means premiums, rates, dues, or other required contributions that are payable under the certificate.

(7) "Rules" means all rules, regulations, or resolutions that are adopted by the supreme governing body or board of directors and that are intended to have general application to the members of the society.

(8) "Society" means a fraternal benefit society described in 33-7-105. The term includes an order or supreme lodge.

History: En. Sec. 4, Ch. 586, L. 1991.

33-7-109. Purposes and powers. (1) A society shall operate for the benefit of members and their beneficiaries by:

(a) providing benefits as provided in 33-7-520; and

(b) providing for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes, which may be extended to others. The purposes may be carried out directly by the society or indirectly through subsidiary corporations or affiliated organizations.

(2) A society may adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It may amend laws and rules and exercise powers necessary and incidental to the objectives and purposes of the society.

History: En. Sec. 5, Ch. 586, L. 1991.

33-7-110. Qualification for membership. (1) A society shall specify in its laws or rules:

(a) eligibility standards for each class of membership. However, if benefits are provided on the lives of children, the minimum age for adult membership must be set at not less than 15 years of age and not more than 21 years of age.

(b) the process for admission to each membership class; and

(c) the rights and privileges of each membership class. However, only benefit members may vote on the management of the insurance affairs of the society.

(2) A society may admit social members who have no voice or vote in the management of the insurance affairs of the society.

(3) Membership rights in the society are personal to the member and are not assignable.

History: En. Sec. 6, Ch. 586, L. 1991.

33-7-111 through 33-7-116. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-111. En. Sec. 653, Ch. 286, L. 1959; R.C.M. 1947, 40-5340; amd. Sec. 1, Ch. 713, L. 1989.

33-7-112. En. Sec. 654, Ch. 286, L. 1959; R.C.M. 1947, 40-5341.

33-7-113. En. Sec. 655, Ch. 286, L. 1959; R.C.M. 1947, 40-5342.

33-7-114. En. Sec. 665, Ch. 286, L. 1959; R.C.M. 1947, 40-5352.

33-7-115. Ap. p. Sec. 669, Ch. 286, L. 1959; Sec. 40-5356, R.C.M. 1947; Ap. p. Sec. 670, Ch. 286, L. 1959; Sec. 40-5357, R.C.M. 1947; R.C.M. 1947, 40-5356, 40-5357.

33-7-116. En. Sec. 671, Ch. 286, L. 1959; R.C.M. 1947, 40-5358.

33-7-117. Scope — provisions applicable. (1) Except as provided in subsection (2), societies are governed by this chapter and are exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state but for every other purpose. The provisions of a law enacted after January 1, 1992, do not apply to fraternal benefit societies unless expressly made applicable by the provisions of the law.

(2) In addition to the provisions of this chapter, the provisions of chapter 1, parts 1 through 4 and 7; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-3-701 through 33-3-704; 33-15-502; and chapters 17, 18, 20, and 22 apply to fraternal benefit societies to the extent applicable and to the extent not in conflict with the provisions of this chapter and the reasonable implications of this chapter.

History: En. Sec. 23, Ch. 586, L. 1991; amd. Sec. 38, Ch. 379, L. 1995.

33-7-118. Reports — fee. Reports must be filed in accordance with the provisions of this section.

(1) On or before March 1 of each year, unless for cause shown the time has been extended by the commissioner of insurance, a society that transacts business in this state shall file with the commissioner of insurance a statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a filing fee of $25. The statement must be in the general form and context approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(2) As part of the annual statement, each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on the preceding December 31. The commissioner may, for cause shown, extend for not more than

2 calendar months the time for filing the valuation. The valuation must be done in accordance with the standards specified in 33-7-411. The valuation and underlying data must be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(3) A society that fails to file the annual statement in the form and within the time provided by this section shall forfeit $100 for each day during which the failure continues, and, upon notice by the commissioner to that effect, its authority to do business in this state ceases while the default continues.

History: **En. Sec. 26, Ch. 586, L. 1991.**

33-7-119. Examination of societies. (1) The commissioner of insurance or any person he may appoint may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of domestic, foreign, or alien insurers. Requirements of notice and an opportunity to respond before findings are made public, as provided in the laws regulating insurers, are applicable to the examination of societies.

(2) The expense of each examination and of each valuation, including compensation and actual expenses of examiners, must be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

History: **En. Sec. 28, Ch. 586, L. 1991.**

33-7-120. Injunction — liquidation — receivership of domestic society. (1) The commissioner of insurance shall notify a domestic society of a deficiency or deficiencies and state in writing the reasons for his dissatisfaction, whenever the commissioner, upon investigation, finds that the society:

(a) has exceeded its powers;

(b) has failed to comply with any provision of this chapter;

(c) is not fulfilling its contracts in good faith;

(d) has a membership of less than 400 after an existence of 1 year or more; or

(e) is conducting business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

(2) Whenever a deficiency or deficiencies are found, the commissioner shall issue to the society a written notice that requires the deficiency or deficiencies to be corrected. The society shall within 30 days comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of the noncompliance and require the society to show cause by a stated date why it should not be enjoined from transacting business until the violation complained of is corrected or why an action in quo warranto should not be commenced against the society.

(3) If the society does not present sufficient reasons why it should not be enjoined from transacting business or why the quo warranto action should not be commenced, the commissioner may present the facts relating to his determination to the attorney general who shall, if he finds that the circumstances warrant, commence an action to enjoin the society from transacting business or an action in quo warranto.

(4) The court shall notify the officers of the society of a hearing. If after a hearing it appears that the society should be enjoined or liquidated or that a receiver should be appointed, the court shall enter the necessary order. A society enjoined from transacting business may not do business until:

(a) the commissioner finds that the violation complained of has been corrected;

(b) the costs of the action have been paid by the society if the court finds that the society was in default as charged;

(c) the court has dissolved its injunction; and

(d) the commissioner has reinstated the certificate of authority.

(5) If the court orders the society liquidated, it is enjoined from transacting any further business. The receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed to close the affairs of the society and distribute its funds to those entitled to the funds.

(6) An action under this section may not be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. The court shall appoint the commissioner as the receiver for a domestic society.

(7) The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership apply to a society that voluntarily decides to discontinue business.

History: En. Sec. 30, Ch. 586, L. 1991.

33-7-121. Suspension, revocation, or refusal of license of foreign or alien society. (1) The commissioner of insurance shall notify a foreign or alien society of a deficiency or deficiencies and state in writing the reasons for his dissatisfaction, whenever the commissioner, upon investigation, finds that the society transacting or applying to transact business in this state:

(a) has exceeded its powers;

(b) has failed to comply with any of the provisions of this chapter;

(c) is not fulfilling its contracts in good faith; or

(d) is conducting its business fraudulently or in a manner hazardous to its members, creditors, or the public.

(2) Whenever a deficiency or deficiencies are found, the commissioner shall issue to the society a written notice that requires the deficiency or deficiencies to be corrected. The society shall within 30 days comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of the noncompliance and require the society to show cause by a stated date why its authority to do business in this state should not be suspended, revoked, or refused.

(3) If the society does not present sufficient reason why its authority to do business in this state should not be suspended, revoked, or refused, the commissioner may:

(a) suspend or refuse the authority of the society to do business in this state until satisfactory evidence is furnished to the commissioner that the suspension or refusal should be withdrawn; or

(b) revoke the authority of the society to do business in this state.

(4) Nothing in this section may be construed as preventing any society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business in this state.

History: En. Sec. 31, Ch. 586, L. 1991.

33-7-122. Injunction. An application or petition for injunction against any domestic, foreign, or alien society or lodge of a society may not be recognized in any court of this state unless made by the attorney general upon request of the commissioner of insurance.

History: En. Sec. 32, Ch. 586, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

33-7-123. Commissioner as agent — service of process — procedure — fee. (1) A society authorized to do business in this state shall appoint in writing the commissioner of insurance as its agent upon whom all lawful process in any action or proceeding against it must be served. The society shall agree in writing that any lawful process against it that is served on the commissioner is of the same legal force and validity as if it had been served upon the society. The appointment continues in force as long as any liability remains outstanding in this state. Copies of the appointment, certified by the commissioner, may be admitted in evidence.

(2) Service may be made only upon the commissioner or, if absent, upon the person in charge of the commissioner's office. Service must be made in duplicate and constitutes service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forward one of the duplicate copies by certified mail to the secretary or corresponding officer of the society. The service may not require a society to file its answer, pleading, or defense in less than 30 days from the date of mailing the copy of the service to the society.

(3) Legal process may not be served upon a society except in the manner provided in this section.

(4) At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of $2.

History: En. Sec. 35, Ch. 586, L. 1991.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

33-7-124. Review. All decisions and findings of the commissioner of insurance made under the provisions of this chapter are subject to review by the court in accordance with the provisions of 33-1-711.

History: En. Sec. 36, Ch. 586, L. 1991.

33-7-125. Penalties. (1) A person who makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from a benefit in any society is guilty of a misdemeanor.

(2) A person who solicits membership for, or in any manner assists in procuring membership in, any society not authorized to transact business in this state is subject to an administrative fine, imposed by the commissioner of insurance, of not less than $25 or more than $500 for each violation.

(3) A person convicted of a willful violation of, or neglect or refusal to comply with, any provision of this chapter for which a penalty is not otherwise prescribed shall be punished by a fine of not more than $1,000 for each violation and not more than $10,000 for all related violations.

History: En. Sec. 37, Ch. 586, L. 1991.

33-7-126. Exemption of certain societies. (1) Nothing in this chapter may be construed to affect or apply to:

(a) grand or subordinate lodges of societies, orders, or associations doing business in this state on July 1, 1992, that provide benefits exclusively through local or subordinate lodges;

(b) (i) orders, societies, or associations that admit to membership only persons engaged in one or more crafts or hazardous occupations or in the same or similar lines of business and that insure only their own members and their families; and

(ii) the ladies' societies or ladies' auxiliaries to such orders, societies, or associations;

(c) domestic societies that limit their membership to employees of a particular city or town, designated firm, business house, or corporation and that provide for a death benefit of not more than $400 or disability benefits of not more than $350 to any person in any 1 year, or both; or

(d) domestic societies or associations of a purely religious, charitable, or benevolent description, which provide for a death benefit of not more than $400 or for disability benefits of not more than $350 to a person in any 1 year, or both.

(2) A society or association described in subsection (1)(c) or (1)(d) that provides for death or disability benefits for which benefit certificates are issued and a society or association included in subsection (1)(d) that has more than 1,000 members are not exempt from the provisions of this chapter.

(3) A society that is exempt under this section from the requirements of this chapter, except a society described in subsection (1)(b), may not give or allow or promise to give or allow to any person any compensation for procuring new members.

(4) A society that provides for benefits in case of death or disability resulting solely from accident and that does not obligate itself to pay natural death or sick benefits has all of the privileges and is subject to all the applicable provisions and regulations of this chapter except the provisions of this chapter that relate to medical examination, valuations of benefit certificates, and incontestability.

(5) The commissioner may require from a society or association, by examination or otherwise, any information that will enable the commissioner to determine whether the society or association is exempt from the provisions of this chapter.

(6) A society that is exempt under the provisions of this section is also exempt from all other provisions of the insurance laws of this state.

History: En. Sec. 38, Ch. 586, L. 1991.

Part 2
Formation

33-7-201 through 33-7-207. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-201. En. Sec. 622, Ch. 286, L. 1959; R.C.M. 1947, 40-5309.

33-7-202. En. Sec. 623, Ch. 286, L. 1959; R.C.M. 1947, 40-5310.

33-7-203. En. Sec. 624, Ch. 286, L. 1959; R.C.M. 1947, 40-5311.

33-7-204. En. Sec. 625, Ch. 286, L. 1959; R.C.M. 1947, 40-5312.

33-7-205. En. Sec. 626, Ch. 286, L. 1959; R.C.M. 1947, 40-5313.

33-7-206. En. Sec. 629, Ch. 286, L. 1959; R.C.M. 1947, 40-5316(part).

33-7-207. En. Sec. 628, Ch. 286, L. 1959; R.C.M. 1947, 40-5315.

33-7-208. Organization. A domestic society organized on or after January 1, 1992, must be formed as follows:

(1) Ten or more citizens of the United States, a majority of whom are residents of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before a notary public, an application for articles of incorporation that states:

(a) the proposed corporate name of the society, which may not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(b) the purposes for which it is being formed and the mode in which its corporate powers are to be exercised. The purposes may not include more liberal powers than are granted by this chapter.

(c) the names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all officers are elected by the supreme governing body. The election must be held not later than 1 year from the date of issuance of the permanent certificate of authority.

(2) The application for articles of incorporation, certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications for certificates, and circulars to be issued by the society, and a bond conditioned upon

the return to applicants of the advanced payments if the organization is not completed within 1 year must be filed with the commissioner, who may require further information considered necessary. The bond, with sureties approved by the commissioner, must be in an amount, not less than $300,000 or more than $1,500,000, required by the commissioner. All documents filed must be in English. If the purposes of the society conform to the requirements of this chapter and all provisions of law have been complied with, the commissioner shall certify, retain, and file the articles of incorporation and furnish to the incorporators a preliminary certificate of authority authorizing the society to solicit members.

(3) A preliminary certificate of authority granted under the provisions of this section is not valid after 1 year from its date of issuance or after an extended period, not exceeding 1 year, as may be authorized by the commissioner upon good cause shown, unless the 500 applicants required under subsection (4) have been secured and the organization has been completed. The charter and all other proceedings under the charter are void 1 year from the date of issuance of the preliminary certificate of authority or at the expiration of the extended period, unless the society has completed its organization and received a certificate of authority to do business.

(4) Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount collected. A society may not incur a liability other than for the return of an advance premium, issue any certificate, or pay, allow, offer, or promise to pay or allow any benefit to a person until:

(a) actual applications for benefits have been secured, aggregating at least $500,000, on not less than 500 applicants, and any necessary evidence of insurability has been furnished to and approved by the society;

(b) at least 10 subordinate lodges have been established into which the 500 applicants have been admitted;

(c) there has been submitted to the commissioner, under oath of the president, secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted, and premiums for benefits; and

(d) it has been shown to the commissioner, by sworn statement of the treasurer or the corresponding officer of the society, that at least 500 applicants have each paid in cash at least one regular monthly premium. The aggregate premiums must amount to at least $150,000. The advance premiums must be held in trust during the period of organization. If the society has not qualified for a certificate of authority within 1 year, unless extended as provided in subsection (3), the premiums must be returned to the applicants.

(5) The commissioner may in his discretion require and examine additional information he considers advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the commissioner shall issue a certificate of authority to the society, authorizing it to transact business pursuant to the provisions of this chapter. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall record the certificate of authority.

(6) A society authorized to transact business in this state on January 1, 1992, is not required to reincorporate.

(7) An unincorporated or voluntary association may not transact business in this state as a society. Every voluntary association incorporated as provided in section 629(2), Chapter 286, Laws of 1959, may incur the obligations and enjoy the

benefits of a society as if it were originally incorporated, and the corporation is considered a continuation of the original voluntary association. The officers must be elected and serve as provided in its articles of incorporation. Incorporation of a voluntary association does not affect existing suits, claims, or contracts.

History: En. Sec. 10, Ch. 586, L. 1991.

33-7-209. Amendments to laws. (1) A domestic society may amend its laws in accordance with the provisions of its laws by action of its supreme governing body at any regular or special meeting or, if its laws provide, by referendum. The referendum may be held in accordance with the provisions of its laws by a vote of the voting members of the society, by a vote of delegates or representatives of voting members, or by a vote of local lodges. A society may provide for voting by mail. An amendment submitted by referendum may not be adopted unless, within 6 months from the date of submission, a majority of the members voting have signified their consent to the amendment.

(2) An amendment to the laws of a domestic society does not take effect unless approved by the commissioner of insurance, who shall approve the amendment if he finds that it has been adopted and is not inconsistent with any requirement of the laws of this state or with the character, objectives, and purposes of the society. Unless the commissioner disapproves an amendment within 60 days after its filing, the amendment is considered approved. The approval or disapproval of the commissioner must be in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the commissioner disapproves an amendment, the reasons for the disapproval must be stated in the written notice.

(3) Within 90 days of approval by the commissioner, all amendments or a synopsis of the amendments must be furnished to all members of the society, either by mail or by publication in full in the official publication of the society.

(4) A foreign or alien society authorized to do business in this state shall file with the commissioner a certified copy of all amendments of or additions to its laws within 90 days after their enactment.

(5) Printed copies of the laws, as amended, that are certified by the secretary or a corresponding officer of the society are prima facie evidence of their legal adoption.

History: En. Sec. 11, Ch. 586, L. 1991.

33-7-210. Institutions. (1) A society may create, maintain, and operate, or may establish organizations to operate, not-for-profit institutions to further the purposes permitted by 33-7-109(1)(b). The institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held, or leased by the society for these purposes must be reported in every annual statement but may not be allowed as an admitted asset of the society.

(2) A society may not own or operate funeral homes or undertaking establishments.

History: En. Sec. 12, Ch. 586, L. 1991.

33-7-211. Repealed. Sec. 41, Ch. 586, L. 1991.

History: En. Sec. 666, Ch. 286, L. 1959; R.C.M. 1947, 40-5353.

33-7-212. Repealed. Sec. 41, Ch. 586, L. 1991.

History: En. Sec. 667, Ch. 286, L. 1959; R.C.M. 1947, 40-5354.

33-7-213. Repealed. Sec. 41, Ch. 586, L. 1991.

History: En. Sec. 668, Ch. 286, L. 1959; R.C.M. 1947, 40-5355.

33-7-214. Reinsurance. (1) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make the reinsurance and authorized to do business in this state or, if not authorized to do business in this state, an insurer that is approved by the commissioner of insurance. A society may not reinsure substantially all of its insurance in force without the written permission of the commissioner. A society may take credit for the reserves on the ceded risks to the extent reinsured. A credit may not be allowed as an admitted asset or as a deduction from liability to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective on or after July 1, 1992, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

(2) Notwithstanding the limitation in subsection (1), a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under 33-7-215.

History: En. Sec. 13, Ch. 586, L. 1991.

33-7-215. Consolidations and mergers. (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. The consolidated or merged society shall file with the commissioner of insurance:

(a) a certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) a sworn statement by the president and secretary or corresponding officers of each society showing the financial condition of each society on a date fixed by the commissioner, but not earlier than December 31 preceding the date of the contract;

(c) a certificate of the officers of each society, verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, held at a regular or special meeting of each body or, if the society's laws permit, by mail; and

(d) evidence that at least 60 days prior to the action of the supreme governing body of each society, the text of the contract was furnished to all members of each society, either by mail or by publication in full in the official publication of each society.

(2) If the commissioner finds that the contract containing the terms and conditions of the proposed consolidation or merger is in conformity with this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate approving the contract.

(3) Upon approval, the contract is in full force and effect unless a society that is a party to the contract is incorporated under the laws of any other state, district, territory, province, or country. In that event, the consolidation or merger is not effective until it is approved as provided by the laws of that state, district, territory, province, or country and a certificate of approval has been filed with the commissioner of insurance of this state.

(4) When the consolidation or merger becomes effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every type of property, real, personal, or mixed, and things in action pertaining to the property are vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by deeds. The title to any real property or interest in real property vested under the laws of this state in any of the societies consolidated or merged may not revert or be impaired by reason of the consolidation or merger, but the title vests in the society resulting from or remaining after the consolidation or merger.

(5) The affidavit of any officer of the society or of anyone authorized by the society to mail a notice or document, stating that the notice or document has been addressed and mailed, is prima facie evidence that the notice or document has been furnished to the addressees.

History: En. Sec. 14, Ch. 586, L. 1991.

33-7-216. Conversion of a society into a mutual life insurance company. A domestic society may be converted and licensed as a mutual life insurance company by compliance with all the applicable requirements of Title 33 if the plan of conversion has been approved by the commissioner of insurance. The board of directors shall prepare a written plan of conversion that sets forth in full the terms and conditions of conversion. An affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting is necessary for the approval of the plan. A conversion may not take effect unless approved by the commissioner, who may approve the conversion if he finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

History: En. Sec. 15, Ch. 586, L. 1991.

33-7-217. Annual certificate — fees. (1) A society may not insure a risk in this state unless it holds a certificate of authority issued to it by the commissioner of insurance.

(2) A society's certificate of authority continues in force as long as the society is entitled to it under this chapter and until suspended, revoked, or otherwise terminated. However, continuance of the certificate by the society is conditioned upon payment before May 15 of each year of a continuation fee of $10. The fee must be deposited by the commissioner of insurance with the state treasurer to the credit of the state general fund.

(3) If a society does not continue its certificate of authority in accordance with subsection (2), its certificate of authority expires at midnight on the May 31 following its failure to continue it in force. In that case, the commissioner shall promptly notify the society of the impending expiration of its certificate of authority.

(4) The commissioner may reinstate a certificate of authority that a society has inadvertently permitted to expire, after the society has fully cured all failures that resulted in the expiration and upon payment by the society of a $25 fee for reinstatement in addition to the continuation fee provided for in subsection (2). If a certificate is not reinstated, the commissioner may grant a society another certificate of authority only after the society files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(5) The commissioner may amend a certificate of authority at any time to conform to changes in a society's charter of insuring powers.

(6) A certified copy or duplicate of a certificate of authority is prima facie evidence that the society is a fraternal benefit society within the meaning of this chapter.

History: En. Sec. 27, Ch. 586, L. 1991.

Part 3

Management

33-7-301 through 33-7-305. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-301. En. Sec. 627, Ch. 286, L. 1959; R.C.M. 1947, 40-5314.

33-7-302. En. Sec. 630, Ch. 286, L. 1959; R.C.M. 1947, 40-5317.

33-7-303. En. Sec. 631, Ch. 286, L. 1959; R.C.M. 1947, 40-5318.

33-7-304. En. Sec. 632, Ch. 286, L. 1959; R.C.M. 1947, 40-5319.

33-7-305. En. Sec. 633, Ch. 286, L. 1959; R.C.M. 1947, 40-5320.

33-7-306. Location of office — meetings — communication to members — grievance procedures. (1) The principal office of a domestic society must be located in this state. The meetings of its supreme governing body may be held in any state, district, province, or territory where the society has at least five subordinate lodges or in a location determined by the supreme governing body. All business transacted at meetings is valid. The minutes of the proceedings of the supreme governing body and of the board of directors must be in English.

(2) (a) A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Required reports, notices, and statements must be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is considered to be mailed to all members at the same address unless a member requests a separate copy.

(b) Not later than June 1 of each year, a synopsis of the society's annual statement, providing an explanation of the facts concerning the condition of the society, must be printed and mailed to each benefit member of the society, or the synopsis may be published in the society's official publication.

(3) A society may provide in its laws or rules for grievance or complaint procedures for members.

History: En. Sec. 7, Ch. 586, L. 1991.

Cross-References

Registered name and registered agent, 35-2-309.

33-7-307. No personal liability. (1) The officers and members of the supreme governing body or any subordinate body of a society are not personally liable for any benefits provided by a society.

(2) A person may be indemnified and reimbursed by a society for expenses reasonably incurred by and liabilities imposed upon him in connection with or arising out of an action, suit, or proceeding (whether civil, criminal, administrative, or investigative) or threat thereof in which the person may be involved by reason of the fact that he is or was a director, officer, employee, or agent of the society or of a firm, corporation, or organization that he served in any capacity at the request of the society.

(3) (a) A person may not be indemnified or reimbursed in relation to any matter in an action, suit, or proceeding:

(i) in which he is finally found to be guilty of breach of a duty as a director, officer, employee, or agent of the society; or

(ii) that is the subject of a compromise settlement.

(b) A person may be indemnified or reimbursed if he acted in good faith for a purpose he reasonably believed to be in, or not opposed to, the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that his conduct was unlawful.

(4) The determination of whether the person's conduct met the standard required in order to justify indemnification or reimbursement in relation to any matter described in subsection (3) may be made only by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of an action, suit, or proceeding by a judgment, order, settlement, or conviction or upon a plea of no contest, does not create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification or reimbursement. The right of indemnification or reimbursement is not exclusive of other rights to which the person may be entitled as a matter of law, and the right inures to the benefit of his heirs, executors, and administrators.

(5) A director, officer, employee, member, or volunteer of a society who serves without compensation may not be held liable, and a cause of action may not be brought, for damages resulting from the exercise of judgment or discretion in connection with the person's duties or responsibilities for the society unless the act or omission involved willful or wanton misconduct.

(6) A society may purchase and maintain liability insurance for acts incurred in the course and scope of the position for a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization.

History: En. Sec. 8, Ch. 586, L. 1991.

33-7-308. Waiver. The laws of the society may provide that a subordinate body or any of its subordinate officers or members may not waive any of the provisions of the laws of the society. The provision is binding on the society and every member and beneficiary of a member.

History: En. Sec. 9, Ch. 586, L. 1991.

Part 4

Finance

33-7-401 through 33-7-407. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-401. En. Sec. 635, Ch. 286, L. 1959; R.C.M. 1947, 40-5322.

33-7-402. En. Sec. 648, Ch. 286, L. 1959; R.C.M. 1947, 40-5335.

33-7-403. En. Sec. 649, Ch. 286, L. 1959; R.C.M. 1947, 40-5336.

33-7-404. En. Sec. 650, Ch. 286, L. 1959; R.C.M. 1947, 40-5337.

33-7-405. En. Sec. 651, Ch. 286, L. 1959; R.C.M. 1947, 40-5338; amd. Sec. 13, Ch. 303, L. 1981.

33-7-406. En. Sec. 652, Ch. 286, L. 1959; R.C.M. 1947, 40-5339.

33-7-407. En. Sec. 656, Ch. 286, L. 1959; R.C.M. 1947, 40-5343.

33-7-408. Investments. A society may invest its funds only in investments authorized by the laws of this state for the investment of assets of life insurers. A foreign or alien society that is permitted or seeking to do business in this state and that invests its funds in accordance with the laws of the state, district, territory, province, or country where it is incorporated meets the requirements of this section for the investment of funds.

History: En. Sec. 21, Ch. 586, L. 1991.

33-7-409. Funds. (1) All assets must be held, invested, and disbursed for the use and benefit of the society, and a member or beneficiary may not have or acquire individual rights in assets or become entitled to any apportionment on the surrender of any part of the assets except as provided in the benefit contract.

(2) A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

(3) Pursuant to a resolution of its supreme governing body, a society may establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the provisions of law regulating life insurers establishing similar accounts and issuing similar contracts. To the extent the society considers it necessary in order to comply with any applicable federal or state laws or any rules issued under those laws, the society may adopt special procedures for administering a separate account and may, for persons having beneficial interests in a separate account, provide special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account. A society may issue contracts on a variable basis to which the provisions of 33-7-523(2) and (4) do not apply.

History: En. Sec. 22, Ch. 586, L. 1991.

33-7-410. Taxation. A society organized or licensed under this chapter is a charitable and benevolent institution, and all of its funds are exempt from all state, county, district, municipal, and school taxes other than taxes on real estate and office equipment.

History: En. Sec. 24, Ch. 586, L. 1991.

Cross-References

Business equipment tax on business personal property, 15-6-122.

33-7-411. Valuation. (1) Standards of valuation for certificates issued prior to July 1, 1993, must be those provided by the laws applicable immediately prior to July 1, 1992.

(2) (a) The minimum standards of valuation for certificates issued on or after July 1, 1993, must be based on the following tables:

(i) for certificates of life insurance—the commissioner of insurance's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers;

(ii) for annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancelable accident and health benefits—the tables authorized for use by life insurers in this state.

(b) All of the certificates must be valued under valuation methods and standards, including interest assumptions, that are in accordance with the laws of this state applicable to life insurers that issue policies containing similar benefits.

(3) The commissioner may accept other standards for valuation if he finds that the reserves produced by the valuation will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard prescribed in this section. The commissioner may vary the standards of mortality applicable to all benefit contracts on substandard lives or other extrahazardous lives by a society authorized to do business in this state.

(4) A society, with the consent of the commissioner of insurance of the state of domicile of the society and under conditions, if any, that the commissioner may impose, may establish and maintain reserves on its certificates in excess of required reserves, but the contractual rights of a benefit member may not be affected by the excess reserves.

History: En. Sec. 25, Ch. 586, L. 1991.

Part 5
Insurance Operations

33-7-501 through 33-7-519. Repealed. Sec. 41, Ch. 586, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

33-7-501. En. Sec. 619, Ch. 286, L. 1959; R.C.M. 1947, 40-5306(part); amd. Sec. 4, Ch. 327, L. 1987.

33-7-502. En. Sec. 620, Ch. 286, L. 1959; R.C.M. 1947, 40-5307.

33-7-503. En. Sec. 621, Ch. 286, L. 1959; R.C.M. 1947, 40-5308.

33-7-504. En. Sec. 634, Ch. 286, L. 1959; amd. Sec. 9, Ch. 423, L. 1971; R.C.M. 1947, 40-5321(part).

33-7-505. En. Sec. 634, Ch. 286, L. 1959; amd. Sec. 9, Ch. 423, L. 1971; R.C.M. 1947, 40-5321(part).

33-7-506. En. Sec. 636, Ch. 286, L. 1959; R.C.M. 1947, 40-5323.

33-7-507. En. Sec. 637, Ch. 286, L. 1959; amd. Sec. 16, Ch. 94, L. 1973; R.C.M. 1947, 40-5324(1).

33-7-508. En. Sec. 637, Ch. 286, L. 1959; amd. Sec. 16, Ch. 94, L. 1973; R.C.M. 1947, 40-5324(2).

33-7-509. En. Sec. 638, Ch. 286, L. 1959; R.C.M. 1947, 40-5325; amd. Sec. 14, Ch. 303, L. 1981.

33-7-510. En. Sec. 639, Ch. 286, L. 1959; R.C.M. 1947, 40-5326.

33-7-511. En. Sec. 640, Ch. 286, L. 1959; R.C.M. 1947, 40-5327.

33-7-512. En. Sec. 641, Ch. 286, L. 1959; R.C.M. 1947, 40-5328.

33-7-513. En. Sec. 642, Ch. 286, L. 1959; R.C.M. 1947, 40-5329.

33-7-514. En. Sec. 643, Ch. 286, L. 1959; R.C.M. 1947, 40-5330; amd. Sec. 16, Ch. 198, L. 1979.

33-7-515. En. Sec. 644, Ch. 286, L. 1959; R.C.M. 1947, 40-5331.

33-7-516. En. Sec. 646, Ch. 286, L. 1959; R.C.M. 1947, 40-5333.

33-7-517. En. Sec. 647, Ch. 286, L. 1959; R.C.M. 1947, 40-5334.

33-7-518. En. Sec. 663, Ch. 286, L. 1959; R.C.M. 1947, 40-5350.

33-7-519. En. Sec. 664, Ch. 286, L. 1959; R.C.M. 1947, 40-5351; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 35, Ch. 798, L. 1991.

33-7-520. Benefits. (1) A society may provide the following contractual benefits in any form:

(a) death benefits;

(b) endowment benefits;

(c) annuity benefits;

(d) temporary or permanent disability benefits;

(e) hospital, medical, or nursing benefits;

(f) monument or tombstone benefits to the memory of deceased members; and

(g) other benefits authorized for life insurers that are not inconsistent with this chapter.

(2) A society shall specify in its rules those persons who may be issued or covered by the contractual benefits in subsection (1), consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person.

History: En. Sec. 16, Ch. 586, L. 1991.

33-7-521. Beneficiaries. (1) The owner of a benefit contract may change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that a revocable beneficiary may not have or obtain a vested interest in the proceeds of a certificate until the certificate becomes due and payable under the provisions of the benefit contract.

(2) A society may make provision for the payment of funeral benefits of up to $500 under a certificate due to a person equitably entitled to payment for the burial of a member.

(3) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds are payable, the amount of the benefit,

except to the extent that funeral benefits may be paid as provided in subsection (2), is payable to the estate of the deceased. If the owner of the certificate is a person other than the insured, the proceeds are payable to the owner.

History: En. Sec. 17, Ch. 586, L. 1991.

33-7-522. Benefits not attachable. Money or other benefits, charity, relief, or aid to be paid, provided, or rendered by a society is not liable to attachment, garnishment, or other process and may not be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member, a beneficiary, or any other person who may have a right to the benefit, either before or after payment by the society.

History: En. Sec. 18, Ch. 586, L. 1991.

33-7-523. Benefit contract. (1) A society authorized to do business in this state shall issue to the owner of a benefit contract a certificate specifying the amount of benefits provided. The certificate must state that the certificate, together with any attached riders or endorsements, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each, constitutes the benefit contract, as of the date of issuance, between the society and the owner. A copy of the application for insurance and declaration of insurability, if any, must be endorsed upon or attached to the certificate. All statements on the application must be representations and not warranties. Any waiver of this provision is void.

(2) Any changes, additions, or amendments to the laws of the society made or enacted after the issuance of the certificate bind the owner and the beneficiaries and control the benefit contract in all respects as if the changes, additions, or amendments were in force at the time of the application for insurance. However, a change, addition, or amendment does not destroy or diminish benefits that the society contracted to give the owner as of the date of issuance.

(3) A person upon whose life a benefit contract is issued before attaining the age of majority is bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(4) A society shall provide in its laws that if its reserves for one or more classes of certificates become impaired, its board of directors or corresponding body may require that the owner of a certificate pay to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board and that if the payment is not made either:

(a) it is an indebtedness against the certificate and draws interest not to exceed the rate specified for certificate loans under the certificates; or

(b) in lieu of or in combination with the provisions of subsection (4)(a), the owner of the certificate may accept a proportionate reduction in benefits under the certificate.

(5) The society may specify the manner of election and which alternative under subsection (4) is to be presumed if no election is made.

(6) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, must be received in evidence concerning the terms and conditions of the documents.

(7) A certificate may not be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner of insurance in the manner provided for policies issued by life and disability insurers in this state. Certificates issued prior to July 1, 1993, must conform to the requirements provided by the laws applicable immediately prior to July 1, 1992. A life, disability, or annuity certificate issued on or after July 1, 1993, must meet the standard contract provision requirements not inconsistent with this chapter for policies issued by life and

disability insurers in this state, except that a society may provide in its certificates for a grace period of 1 month for payment of premiums. The certificate must contain a provision stating the amount of premiums payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate that, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for the expulsion or suspension of a member, the certificate must contain a provision that a member expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, has the privilege of maintaining the certificate in force by continuing payment of the required premium.

(8) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and it may provide in all other respects for the regulation, government, and control of the certificates and all rights, obligations, and liabilities incident to and connected with the transfer. Ownership rights prior to the transfer must be specified in the certificate.

(9) A society may specify the terms and conditions on which benefit contracts may be assigned.

History: En. Sec. 19, Ch. 586, L. 1991.

33-7-524. Nonforfeiture benefits, cash surrender values, certificate loans, and other options. (1) For certificates issued prior to July 1, 1993, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted must comply with the provisions of law applicable immediately prior to July 1, 1992.

(2) For certificates issued on or after July 1, 1993, for which reserves are computed on the commissioner of insurance's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard mortality table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted may not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing similar benefits based upon the tables.

History: En. Sec. 20, Ch. 586, L. 1991.

33-7-525. Insurance producer defined. The term "insurance producer" as used in this chapter means any authorized or acknowledged insurance producer of a society who acts as such in the solicitation, negotiation, or procurement or making of a life insurance, accident and health insurance, or annuity contract. The term "insurance producer" does not include any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

History: En. Sec. 657, Ch. 286, L. 1959; R.C.M. 1947, 40-5344(2); amd. Sec. 15, Ch. 303, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-7-526. Repealed. Sec. 69, Ch. 472, L. 1999.

History: En. Secs. 657, 658, Ch. 286, L. 1959; R.C.M. 1947, 40-5344(1), 40-5345; amd. Sec. 16, Ch. 303, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-7-527 through 33-7-530. Repealed. Sec. 29, Ch. 303, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

33-7-527. En. Sec. 659, Ch. 286, L. 1959; R.C.M. 1947, 40-5346.

33-7-528. En. Sec. 660, Ch. 286, L. 1959; R.C.M. 1947, 40-5347.

33-7-529. En. Sec. 662, Ch. 286, L. 1959; R.C.M. 1947, 40-5349.

33-7-530. En. Sec. 661, Ch. 286, L. 1959; R.C.M. 1947, 40-5348.

33-7-531. Foreign or alien society — admission. (1) A foreign or alien society may not transact business in this state without a license issued by the commissioner of insurance. A foreign or alien society desiring admission to this state shall comply substantially with the requirements and limitations of this chapter applicable to domestic societies. A society may be licensed to transact business in this state upon filing with the commissioner:

(a) a certified copy of its articles of incorporation;

(b) a copy of its bylaws, certified by its secretary or corresponding officer;

(c) a written appointment of the commissioner to be the society's agent, as prescribed in 33-7-123;

(d) a statement of its business, under oath of its president and secretary or corresponding officers, in a form prescribed by the commissioner, verified by an examination made by the supervising insurance official of its home state or other state, district, territory, province, or country satisfactory to the commissioner of this state;

(e) certification from the proper official of its home state, district, territory, province, or country that the society is legally incorporated and licensed to transact business in that jurisdiction;

(f) copies of its certificate forms; and

(g) other information the commissioner considers necessary.

(2) A foreign or alien society applying for authority to transact business in this state must have the qualifications required of domestic societies organized under this chapter.

History: En. Sec. 29, Ch. 586, L. 1991.

33-7-532. Producer licensing. (1) A society's insurance producer must be considered to be an insurance producer and is subject to the same licensing requirements as insurance producers under Title 33, chapter 17, except that an examination is not required of an individual who is licensed in this state as an insurance producer for a society as to the kind of insurance to be transacted on or before October 1, 1981, and who continues to be licensed as an insurance producer.

(2) A society doing business in this state may not pay to a person who is not a licensed insurance producer of the society any commission or other compensation for any services in obtaining in this state any new contract of life, accident, or health insurance or any new annuity contract.

History: En. Sec. 33, Ch. 586, L. 1991.

33-7-533. Unfair methods of competition and unfair or deceptive acts and practices. A society authorized to do business in this state and its insurance producers are subject to the provisions of chapter 18 that relate to unfair or deceptive trade practices. However, nothing in chapter 18 may be construed as applying to or affecting the right of a society to determine its eligibility requirements for membership or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

History: En. Sec. 34, Ch. 586, L. 1991.

CHAPTER 8

INSURANCE ASSISTANCE PLANS (Terminated. Sec. 1, Ch. 134, L. 1979; Sec. 22, Ch. 11, Sp. L. March 1986; Sec. 1, Ch. 404, L. 1987)

Chapter Compiler's Comments

Sections Terminated:

33-8-101 through 33-8-114. Terminated. Sec. 1, Ch. 134, L. 1979.

33-8-115 through 33-8-124. Terminated. Sec. 1, Ch. 404, L. 1987.

33-8-201 through 33-8-231. Terminated. Sec. 22, Ch. 11, Sp. L. March 1986.

Histories of Terminated Sections:

33-8-101 through 33-8-114. En. 40-6001 thru 40-6010 by Secs. 1 thru 10, Ch. 246, L. 1977; R.C.M. 1947, 40-6001 thru 40-6010.

33-8-115 through 33-8-124. En. Secs. 1 thru 10, Ch. 301, L. 1985.

33-8-201. En. Sec. 1, Ch. 11, Sp. L. March 1986.

33-8-202. En. Sec. 2, Ch. 11, Sp. L. March 1986.

33-8-203. En. Sec. 3, Ch. 11, Sp. L. March 1986.

33-8-204. En. Sec. 15, Ch. 11, Sp. L. March 1986.

33-8-205. En. Sec. 16, Ch. 11, Sp. L. March 1986.

33-8-206 through 33-8-210 reserved.

33-8-211. En. Sec. 4, Ch. 11, Sp. L. March 1986.

33-8-212. En. Sec. 5, Ch. 11, Sp. L. March 1986.

33-8-213. En. Sec. 6, Ch. 11, Sp. L. March 1986; amd. Sec. 16, Ch. 713, L. 1989.

33-8-214. En. Sec. 7, Ch. 11, Sp. L. March 1986.

33-8-215 through 33-8-220 reserved.

33-8-221. En. Sec. 8, Ch. 11, Sp. L. March 1986.

33-8-222. En. Sec. 9, Ch. 11, Sp. L. March 1986.

33-8-223 and 33-8-224 reserved.

33-8-225. En. Sec. 10, Ch. 11, Sp. L. March 1986.

33-8-226. En. Sec. 11, Ch. 11, Sp. L. March 1986.

33-8-227. En. Sec. 12, Ch. 11, Sp. L. March 1986.

33-8-228. En. Sec. 13, Ch. 11, Sp. L. March 1986.

33-8-229 and 33-8-230 reserved.

33-8-231. En. Sec. 14, Ch. 11, Sp. L. March 1986.

CHAPTER 9

PROFESSIONAL LIABILITY INSURANCE

Part 1 — General Provisions

33-9-101. Definitions.
33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers.
33-9-103. Incorporation and regulation.
33-9-104. Initial qualifications.
33-9-105. Foreign or alien insurers — certification.

Chapter Cross-References

Professional liability, Title 33, ch. 23, part 3.

Part 1

General Provisions

33-9-101. Definitions. As used in this part, the following definitions apply:

(1) "Health care provider" means any person, corporation, facility, or institution of a governmental unit of any state licensed by that state to provide

health care, including but not limited to physician, osteopath, registered nurse, licensed practical nurse, dentist, optometrist, podiatrist, hospital, hospital-related facility, or long-term care facility.

(2) "Other professional" means an attorney, certified public accountant, public accountant, architect, veterinarian, pharmacist, and professional engineer licensed or otherwise legally authorized by a state to render professional services.

History: **En. 40-4759 by Sec. 1, Ch. 119, L. 1977; R.C.M. 1947, 40-4759(intro.), (2), (3).**

33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers. A health care provider or other professional may be a member of a mutual insurer, a stockholder of a stock insurer, or a subscriber of a reciprocal insurer, whether such mutual, stock, or reciprocal insurer is domestic, foreign, or alien, for the purpose of protecting himself by insurance against loss, damage, or expense incident to a claim arising out of a breach of contract, pecuniary or personal injury to or death of any person, or other loss as the result of negligence in rendering professional services by any health care provider or other professional.

History: **En. 40-4760 by Sec. 2, Ch. 119, L. 1977; R.C.M. 1947, 40-4760.**

33-9-103. Incorporation and regulation. A domestic mutual, stock, or reciprocal insurer, organized for the purpose of transacting insurance business as set forth in 33-9-102, shall organize under the provisions of Title 33 and be regulated as therein provided. The provisions of this part govern whenever in conflict with other laws or parts of laws of any state.

History: **En. 40-4761 by Sec. 3, Ch. 119, L. 1977; R.C.M. 1947, 40-4761.**

Cross-References

Formation of domestic mutual or stock insurers, Title 33, ch. 3, part 2.

Formation of reciprocal insurer, Title 33, ch. 5, part 2.

33-9-104. Initial qualifications. No original certificate of authority for a mutual, stock, or reciprocal insurer may be issued by the commissioner until applications representing 250 members of the profession under consideration have been received by the commissioner or in the case of health care providers that are hospitals, hospital-related facilities, or long-term care facilities, applications representing 50% of the beds in the state or states affected, and until the commissioner has determined that such insurer or insurers have bona fide applications representing the number of applicants required.

History: **En. 40-4762 by Sec. 4, Ch. 119, L. 1977; R.C.M. 1947, 40-4762.**

Cross-References

Original certificate of authority — general requirements, 33-2-115.

33-9-105. Foreign or alien insurers — certification. Any mutual, stock, or reciprocal insurer organized under the laws of another state substantially similar to this part for the purpose of transacting the kind of business described in this part may, upon an application and without prior operating experience or examination, be admitted to solicit applications. If the necessary number of applications is obtained, the insurer may do business in this state if the commissioner finds such admission is in the public interest. Thereafter the insurer shall make all reports and be subject to taxation, examination, and supervision by the commissioner to the same extent and in the same manner as are other foreign or alien insurers.

History: **En. 40-4763 by Sec. 5, Ch. 119, L. 1977; R.C.M. 1947, 40-4763.**

CHAPTER 10

INSURANCE GUARANTY ASSOCIATIONS

Part 1 — Casualty and Property Insurance Guaranty Associations

33-10-101. Short title, purpose, scope, and construction.
33-10-102. Definitions.
33-10-103. Creation of the association.
33-10-104. Board of directors — commissioner approval — compensation.
33-10-105. General powers and duties.
33-10-106. Plan of operation — delegation to other organization.
33-10-107. Tax exemption.
33-10-108. Prevention of insolvencies — directors' and commissioner's action.
33-10-109. Notice of insolvencies — suspension — other powers and duties of commissioner.
33-10-110. Immunity.
33-10-111. Stay of proceedings — reopening of default judgments.
33-10-112. Examination of association.
33-10-113. Claims — notice.
33-10-114. Claims — effect as to insured and receiver.
33-10-115. Recovery — sequence — nonduplication.
33-10-116. Assessment.
33-10-117. Recognition of assessments in rates.

Part 2 — Life and Health Insurance Guaranty Associations

33-10-201. Short title, purpose, scope, and construction.
33-10-202. Definitions.
33-10-203. Creation of the association — accounts — supervision by commissioner.
33-10-204. Board of directors — commissioner approval — compensation.
33-10-205. General powers of association — standing.
33-10-206. Records of meetings and negotiations.
33-10-207. Immunity.
33-10-208. Tax exemptions.
33-10-209. Examination of the association — annual report.
33-10-210. Unfair trade practice — notice to policyholders.
33-10-211 through 33-10-214 reserved.
33-10-215. Duties and powers of the commissioner.
33-10-216. Plan of operation — delegation of powers provision.
33-10-217. Prevention of insolvencies or impairments.
33-10-218. Examination by commissioner — cost.
33-10-219. Impaired insurer — association's powers prior to liquidation.
33-10-220. Impaired insurer — association's powers during liquidation.
33-10-221. Nomination of liquidator by association — notification given by liquidator.
33-10-222. Stay of proceedings — reopening default judgments.
33-10-223. Assignment by beneficiaries — subrogation.
33-10-224. Extent of liability.
33-10-225. Association as creditor — use of assets.
33-10-226. Distribution of ownership rights — distribution to shareholders.
33-10-227. Assessments — abatement — basis for ratesetting.
33-10-228. Suspension for failure to pay — forfeiture — appeal from board actions.
33-10-229. Repealed.
33-10-230. Tax — writeoffs of certificates of contribution.

Part 1

Casualty and Property Insurance Guaranty Associations

Part Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

Montana Self-Insurers Guaranty Fund Act, Title 39, ch. 71, part 26.

33-10-101. Short title, purpose, scope, and construction. (1) This part shall be known and may be cited as the "Montana Insurance Guaranty Association Act".

(2) The purpose of this part is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

(3) This part shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance.

(4) This part shall be liberally construed to effect the purpose under subsection (2) which shall constitute an aid and guide to interpretation.

History: En. Secs. 1, 2, 3, 4, Ch. 63, L. 1971; R.C.M. 1947, 40-5701, 40-5702, 40-5703, 40-5704; amd. Sec. 3, Ch. 139, L. 1987.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

33-10-102. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the Montana insurance guaranty association created under 33-10-103.

(2) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part applies issued by an insurer, if the insurer becomes an insolvent insurer after July 1, 1971, and:

(i) the claimant or insured is a resident of this state at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this state.

(b) Covered claim does not include any amount:

(i) awarded as punitive or exemplary damages;

(ii) sought as a return of premium under a retrospective rating plan; or

(iii) due a reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, or indemnification. If insolvent, a reinsurer, insurer, insurance pool, or underwriting association may not assert a claim in any amount against an insured except to the extent that the claim exceeds the policy limits of the insured's policy.

(3) "Insolvent insurer" means an insurer:

(a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) determined to be insolvent by a court of competent jurisdiction.

(4) "Member insurer" means a person who:

(a) writes any kind of insurance to which this part applies under 33-10-101(3), including the exchange of reciprocal or interinsurance contracts; and

(b) is licensed to transact insurance in this state.

(5) (a) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums

on the policies and dividends paid or credited to policyholders of policies to which this part applies.

(b) Net direct written premiums does not include premiums on contracts between insurers or reinsurers.

(6) "Person" means any individual, corporation, partnership, association, or voluntary organization.

History: En. Sec. 5, Ch. 63, L. 1971; R.C.M. 1947, 40-5705(1), (3) thru (7); amd. Sec. 24, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in definition of covered claim in (b) substituted (i) through (iii) providing that certain amounts are not included in a covered claim for former text that read: "due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise"; in definition of net direct written premiums in (a) at end after "policyholders" substituted "of policies to which this part applies" for "on such direct business"; and made minor changes in style. Amendment effective October 1, 1999.

33-10-103. Creation of the association. There is created a nonprofit unincorporated legal entity to be known as the Montana insurance guaranty association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under 33-10-106 and shall exercise its powers through a board of directors established under 33-10-104.

History: En. Sec. 6, Ch. 63, L. 1971; R.C.M. 1947, 40-5706.

33-10-104. Board of directors — commissioner approval — compensation. (1) The board of directors of the association consists of not less than seven or more than nine persons serving terms as established in the plan of operation. Two of the members must be appointed from the public at large by the commissioner. The other members of the board must be selected by member insurers subject to the approval of the commissioner. Vacancies on the board must be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History: En. Sec. 7, Ch. 63, L. 1971; R.C.M. 1947, 40-5707(part); amd. Sec. 1, Ch. 65, L. 1995.

33-10-105. General powers and duties. (1) The association:

(a) (i) is obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if the insured does so within 30 days of the determination;

(ii) is obligated under subsection (1)(a)(i) only for that amount of each covered claim that is in excess of $100 and is less than $300,000, except that:

(A) the association shall pay an amount not exceeding $10,000 per policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation policy; and

(iii) is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(b) is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested;

(d) shall notify persons as the commissioner directs under 33-10-109(2)(a);

(e) shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer.

(f) shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) The association may:

(a) employ or retain persons as are necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to contracts as are necessary to carry out the purpose of this part;

(e) perform other acts as are necessary or proper to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

History: En. Sec. 8, Ch. 63, L. 1971; R.C.M. 1947, 40-5708(part); amd. Sec. 53, Ch. 596, L. 1993.

Cross-References

Standing — rehabilitation or liquidation proceedings, 33-2-1335, 33-2-1349.

33-10-106. Plan of operation — delegation to other organization. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) establish the procedures whereby all the powers and duties of the association under 33-10-105 and 33-10-116 will be performed;

(b) establish procedures for handling assets of the association;

(c) establish the amount and method of reimbursing members of the board of directors under 33-10-104;

(d) establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims;

(e) establish regular places and times for meetings of the board of directors;

(f) establish procedures for records to be kept of all financial transactions of the association, its insurance producers, and the board of directors;

(g) provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision;

(h) establish the procedures whereby selections for the board of directors will be submitted to the commissioner;

(i) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-105(2)(b) and 33-10-116, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

History: En. Sec. 9, Ch. 63, L. 1971; R.C.M. 1947, 40-5709(part); amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Notice and hearing by Commissioner, 33-1-313.

33-10-107. Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

History: En. Sec. 15, Ch. 63, L. 1971; R.C.M. 1947, 40-5715.

Cross-References

Property subject to taxation, Title 15, ch. 6.

33-10-108. Prevention of insolvencies — directors' and commissioner's action. (1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

History: En. Sec. 13, Ch. 63, L. 1971; R.C.M. 1947, 40-5713; amd. Sec. 140, Ch. 575, L. 1981.

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

33-10-109. Notice of insolvencies — suspension — other powers and duties of commissioner. (1) The commissioner shall:

(a) notify the association of the existence of an insolvent insurer not later than 3 days after he receives notice of the determination of the insolvency;

(b) upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed 5% of the unpaid assessment per month, except that no fine shall be less than $100 per month.

(c) revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this part shall be subject to judicial review in a court of competent jurisdiction.

History: En. Sec. 10, Ch. 63, L. 1971; R.C.M. 1947, 40-5710.

Cross-References

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

33-10-110. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its insurance producers or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this part.

History: En. Sec. 17, Ch. 63, L. 1971; R.C.M. 1947, 40-5717; amd. Sec. 1, Ch. 713, L. 1989.

33-10-111. Stay of proceedings — reopening of default judgments. (1) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state must be stayed for 6 months from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, or must be stayed for any additional time as may be determined by the court in order to permit proper defense by the association of all pending causes of action.

(2) As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of the insured may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and must be permitted to defend against the claim on the merits.

History: En. Sec. 18, Ch. 63, L. 1971; R.C.M. 1947, 40-5718; amd. Sec. 54, Ch. 596, L. 1993.

Cross-References

Standing of associations, 33-2-1335, 33-2-1349.

Default judgments — setting aside, Rule 55(c), M.R.Civ.P. (see Title 25, ch. 20).

33-10-112. Examination of association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

History: En. Sec. 14, Ch. 63, L. 1971; R.C.M. 1947, 40-5714.

33-10-113. Claims — notice. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its insurance producer, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

History: En. Sec. 9, Ch. 63, L. 1971; R.C.M. 1947, 40-5709(part); amd. Sec. 1, Ch. 713, L. 1989.

33-10-114. Claims — effect as to insured and receiver. (1) Any person recovering under this part is considered to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent that the person would have been required to cooperate with the insolvent insurer. The association does not have a cause of action against the insured of the insolvent insurer for any sums it has paid out except causes of action that the insolvent insurer would have had if the sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association may not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The association has the right to recover from the following persons the amount of any "covered claim" paid on behalf of the person pursuant to this part:

(a) any insured whose net worth, on December 31 of the year preceding the date the insurer becomes an insolvent insurer, exceeds $50 million and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part; and

(b) any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part.

(3) The receiver, liquidator, or statutory successor of an insolvent insurer is bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant the claims priority equal

to that which the claimant would have been entitled in the absence of this part against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims must be accorded the same priority as the liquidator's expenses.

(4) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

History: En. Sec. 11, Ch. 63, L. 1971; R.C.M. 1947, 40-5711; amd. Sec. 55, Ch. 596, L. 1993.

Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

Standing of associations, 33-2-1335, 33-2-1349.

Priority of association's claims, 33-2-1363.

33-10-115. Recovery — sequence — nonduplication. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History: En. Sec. 12, Ch. 63, L. 1971; R.C.M. 1947, 40-5712.

33-10-116. Assessment. (1) The association shall assess insurers amounts necessary to pay the obligations of the association under 33-10-105(1)(a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under 33-10-108, and other expenses authorized by this part.

(2) The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year an amount greater than 2% of that member insurer's net direct written premiums for the preceding calendar year.

(3) If the maximum assessment together with the other assets of the association does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(4) The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

(5) Each member insurer may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

History: **En. Sec. 8, Ch. 63, L. 1971; R.C.M. 1947, 40-5708(1)(c).**

33-10-117. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this part applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

History: **En. Sec. 16, Ch. 63, L. 1971; R.C.M. 1947, 40-5716.**

Part 2

Life and Health Insurance Guaranty Associations

Part Cross-References

Supervision, rehabilitation, and liquidation of insurers, Title 33, ch. 2, part 13.

Montana Self-Insurers Guaranty Fund Act, Title 39, ch. 71, part 26.

33-10-201. Short title, purpose, scope, and construction. (1) This part may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing the policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

(4) This part applies to direct, nongroup life, health, annuity, and supplemental policies or contracts, to certificates under direct group policies and contracts, and to unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

(5) This part provides coverage for policies and contracts specified in subsection (6):

(a) to persons who are owners of or certificate holders under covered policies or, in the case of unallocated annuity contracts, to the persons who are contract holders if the persons:

(i) are residents; or

(ii) are not residents, but only under all of the following conditions:

(A) the insurers that issued the policies are domiciled in this state;

(B) the insurers have not held a license or certificate of authority in the state in which the persons reside;

(C) the state has an association similar to the association created under this part; and

(D) the persons are not eligible for coverage by that association; and

(b) to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subsection (5)(a).

(6) This part covers persons specified in subsection (5)(a) for direct, nongroup life, health, annuity, and supplemental policies and contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, allocated and unallocated funding agreements, structured settlement agreements, lottery contracts, and immediate or deferred annuity contracts. This part does not apply to:

(a) policies or contracts or any part of the policies or contracts under which the risk is borne by the policyholder;

(b) a policy or contract or part of the policy or contract assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(c) any portion of a policy or contract to the extent that the rate of interest on which it is based:

(i) averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for the lesser period if the policy or contract was issued less than 4 years before the association became obligated; and

(ii) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as is most recently available;

(d) any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:

(i) a multiple employer welfare arrangement, as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(e) any portion of a policy or contract to the extent that it provides dividends or experience rating credits or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(f) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(g) any unallocated annuity contract issued to an employee benefit plan that is protected under the federal pension benefit guaranty corporation; and

(h) any portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

(7) This part must be liberally construed to effect the purpose under subsections (2) and (3), which constitute an aid and guide to interpretation.

(8) This part may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

History: En. 40-5801 thru 40-5804, 40-5814 by Secs. 1 thru 4, 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5801, 40-5802, 40-5803, 40-5804, 40-5814(1); amd. Sec. 1, Ch. 576, L. 1987; amd. Sec. 56, Ch. 596, L. 1993; amd. Sec. 39, Ch. 379, L. 1995.

33-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Account" means either of the two accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scope of this part under 33-10-201(4) through (6).

(5) "Impaired insurer" means:

(a) an insurer that becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer considered by the commissioner to be unable or potentially unable to fulfill its contractual obligations.

(6) (a) "Member insurer" means an insurer that is licensed or that holds a certificate of authority to transact any kind of insurance in this state for which coverage is provided under 33-10-201 and 33-10-224 and includes any insurer whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The term does not include:

(i) a health service corporation;

(ii) a health maintenance organization;

(iii) a fraternal benefit society;

(iv) a mandatory state pooling plan;

(v) a mutual assessment company or any entity that operates on an assessment basis;

(vi) an insurance exchange; or

(vii) an entity similar to any of the entities listed in subsections (6)(b)(i) through (6)(b)(vi).

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) (a) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations on premiums and dividends paid or credited to policyholders on the direct business.

(b) The term does not include premiums and considerations on contracts between insurers and reinsurers.

(c) As used in 33-10-227, premiums are those for the calendar year preceding the determination of impairment.

(9) "Resident" means a person who resides in this state at the time that the impairment is determined and to whom contractual obligations are owed.

(10) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate.

History: En. 40-5805 by Sec. 5, Ch. 245, L. 1974; R.C.M. 1947, 40-5805(1), (2), (4) thru (10); amd. Sec. 140, Ch. 575, L. 1981; amd. Sec. 2, Ch. 576, L. 1987; amd. Sec. 57, Ch. 596, L. 1993; amd. Sec. 40, Ch. 379, L. 1995; amd. Sec. 145, Ch. 42, L. 1997; amd. Sec. 20, Ch. 531, L. 1997.

33-10-203. Creation of the association — accounts — supervision by commissioner. (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under 33-10-216 and shall exercise its powers through a board of directors established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain two accounts:

(a) the health insurance account; and

(b) the life insurance and annuity account that includes the following subaccounts:

(i) the life insurance account;

(ii) the annuity account; and

(iii) the unallocated annuity account that must include unallocated annuity contracts qualified under section 403(b) of the Internal Revenue Code.

(3) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

History: En. 40-5806 by Sec. 6, Ch. 245, L. 1974; R.C.M. 1947, 40-5806; amd. Sec. 58, Ch. 596, L. 1993.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

33-10-204. Board of directors — commissioner approval — compensation. (1) The board of directors of the association consists of seven members serving terms as established in the plan of operation. Two of the members must be appointed from the public at large by the commissioner. The other members of the board must be selected by member insurers subject to the approval of the commissioner. Vacancies on the board must be filled for the remaining period of the term in the manner described in the plan of operation. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(2) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board may not otherwise be compensated by the association for their services. However, any designated representatives of members of the board who are not full-time employees of the member insurers that designated them may receive reasonable compensation for their services on the board of directors upon annual approval by the members of the association.

History: En. 40-5807 by Sec. 7, Ch. 245, L. 1974; R.C.M. 1947, 40-5807(part); amd. Sec. 3, Ch. 576, L. 1987; amd. Sec. 2, Ch. 65, L. 1995.

33-10-205. General powers of association — standing. (1) The association may:

(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under 33-10-228;

(c) borrow money to effect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(d) employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this part;

(e) negotiate and contract with any liquidator, rehabilitator, supervisor, or ancillary receiver to carry out the powers and duties of the association;

(f) take such legal action as may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

(2) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(3) The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this part. Such standing shall extend to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(7), (8), (11).

Cross-References

Standing — rehabilitation or liquidation proceedings, 33-2-1335, 33-2-1349.

33-10-206. Records of meetings and negotiations. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under this part. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or supervision proceeding involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this section shall limit the duty of the association to render a report of its activities under 33-10-209.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(2); amd. Sec. 140, Ch. 575, L. 1981.

33-10-207. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its insurance producers or employees, the association or its insurance producers or employees, members of the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this part.

History: En. 40-5818 by Sec. 18, Ch. 245, L. 1974; R.C.M. 1947, 40-5818; amd. Sec. 1, Ch. 713, L. 1989.

33-10-208. Tax exemptions. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real property.

History: En. 40-5816 by Sec. 16, Ch. 245, L. 1974; R.C.M. 1947, 40-5816.

Cross-References

Property subject to taxation, Title 15, ch. 6.

33-10-209. Examination of the association — annual report. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

History: **En. 40-5815 by Sec. 15, Ch. 245, L. 1974; R.C.M. 1947, 40-5815.**

Cross-References

Examination by Commissioner, Title 33, ch. 1, part 4.

33-10-210. Unfair trade practice — notice to policyholders. (1) It is a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

(2) Within 180 days after October 1, 1993, the association shall prepare a summary document, complying with subsection (3) and describing the general purposes and current limitations of this part. The document must be submitted to the commissioner for approval. Sixty days after receiving approval, an insurer may not deliver a policy or contract described in 33-10-201(4) to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract, unless subsection (4) applies. The document must be available upon request by a policyholder. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the contract or the holder of the policy or contract would be covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this part may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder, or insured any greater rights than those stated in this part.

(3) The document prepared under subsection (2) must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer must:

(a) state the name and address of the life and health insurance guaranty association and insurance department;

(b) prominently warn the policy or contract holder that the life and health insurance guaranty association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(c) state that the insurer and its insurance producers are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(d) emphasize that the policy or contract holder should not rely on coverage under the life and health insurance guaranty association when selecting an insurer;

(e) provide other information as directed by the commissioner.

(4) An insurer or insurance producer may not deliver a policy or contract described in 33-10-201(4) and excluded under 33-10-201(6)(a) from coverage under this part unless the insurer or insurance producer, prior to or at the time of delivery, gives the policy or contract holder a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association.

(5) The commissioner shall by rule specify the form and content of the notice required under subsection (4).

History: **En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(5); amd. Sec. 59, Ch. 596, L. 1993.**

Cross-References

Unfair trade practices, Title 33, ch. 18.

33-10-211 through 33-10-214 reserved.

33-10-215. Duties and powers of the commissioner. In addition to the duties and powers enumerated elsewhere in this part, the commissioner shall:

(1) notify the board of directors of the existence of an impaired insurer not later than 3 days after a determination of impairment is made or he receives notice of impairment;

(2) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(3) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this part.

(4) in any liquidation or rehabilitation proceeding involving a domestic insurer be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.

History: En. 40-5811 by Sec. 11, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(1).

Cross-References

Liquidation or rehabilitation proceedings, Title 33, ch. 2, part 13.

33-10-216. Plan of operation — delegation of powers provision. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within 180 days following July 1, 1974, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under 33-10-204;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its insurance producers, and the board of directors;

(e) establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;

(f) establish any additional procedures for assessments under 33-10-227;

(g) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-205(1)(c) and 33-10-227, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed for any

payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

History: **En. 40-5810 by Sec. 10, Ch. 245, L. 1974; R.C.M. 1947, 40-5810; amd. Sec. 1, Ch. 713, L. 1989.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Promulgation of rules by Commissioner, 33-1-313.

33-10-217. Prevention of insolvencies or impairments. (1) To aid in the detection and prevention of insurer insolvencies or impairments, the commissioner shall:

(a) (i) notify the commissioners of all the other states, the territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:

(A) the revocation of a license;

(B) the suspension of a license; or

(C) the issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors;

(ii) mail the notice to all commissioners within 30 days following the action taken or the date on which the action occurs;

(b) report to the board of directors when the commissioner has taken any of the actions set forth in subsection (1)(a) or has received a report from any other commissioner indicating that an action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from another commissioner.

(c) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer; and

(d) furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners. The board of directors may use the information contained in the ratios and listings in carrying out its duties and responsibilities under this section. The report and the information contained in the ratios and listings must be kept confidential by the board of directors until the time it is made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(3) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(4) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good

faith believes may be unable or potentially unable to fulfill its contractual obligations.

(5) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer. The reports and recommendations are not considered public documents.

(6) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

(7) The board of directors shall, at the conclusion of any insurer impairment in which the association carried out its duties under this part or exercised any of its powers under this part, prepare a report on the history and causes of the impairment, based on the information available to the association, and submit the report to the commissioner. The board of directors shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer and may adopt by reference any report prepared by other associations.

History: En. 40-5812 by Sec. 12, Ch. 245, L. 1974; R.C.M. 1947, 40-5812(part); amd. Sec. 17, Ch. 198, L. 1979; amd. Sec. 140, Ch. 575, L. 1981; amd. Sec. 60, Ch. 596, L. 1993.

33-10-218. Examination by commissioner — cost. (1) The commissioner may conduct the examination requested by the board pursuant to 33-10-217(4). The examination may be conducted as a national association of insurance commissioners examination or may be conducted by persons whom the commissioner designates. The cost of the examination must be paid by the association, and the examination report must be treated as are other examination reports.

(2) The examination report may not be released to the board of directors of the association prior to its release to the public, but this may not excuse the commissioner from the obligation to comply with subsection (4). The commissioner shall notify the board of directors when the examination is completed.

(3) The request for an examination must be kept on file by the commissioner, but it may not be open to public inspection prior to the release of the examination report to the public and must be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(4) The commissioner shall report to the board of directors when the commissioner has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

History: En. 40-5812 by Sec. 12, Ch. 245, L. 1974; R.C.M. 1947, 40-5812(part); amd. Sec. 61, Ch. 596, L. 1993.

33-10-219. Impaired insurer — association's powers prior to liquidation. If an insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer and approved by the impaired insurer and the commissioner:

(1) guarantee or reinsure or cause to be guaranteed, assumed, or reinsured all the covered policies of the impaired insurer;

(2) provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate this section and assure payment of the contractual obligations of the impaired insurer pending action under subsection (1); and

(3) loan money to the impaired insurer.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(1), (2); amd. Sec. 140, Ch. 575, L. 1981; amd. Sec. 4, Ch. 576, L. 1987.

Cross-References

Orders of rehabilitation, 33-2-1332.

Orders of liquidation, 33-2-1342.

33-10-220. Impaired insurer — association's powers during liquidation. (1) If an insurer is an impaired insurer under an order of liquidation or rehabilitation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the impaired insurer;

(b) assure payment of the contractual obligations of the impaired insurer; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(2) If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this part with respect to such domestic, foreign, or alien impaired insurer.

(3) In carrying out its duties under subsection (1), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means; and such liens, moratoriums, or similar means may be imposed if the commissioner:

(a) finds that the amounts which can be assessed under this part are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(b) approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(4) Before being obligated under subsection (1), the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans, and such temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(5) The association shall have no liability under 33-10-219 or this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation for residents of this state protection substantially similar to that provided by this part for residents of other states.

(6) (a) If proceeding under this section, the association may, with respect to life and health insurance policies:

(i) assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer for claims incurred:

(A) with respect to group policies, not later than the earlier of the next renewal date under the policy or contract or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies;

(B) with respect to individual policies, not later than the earlier of the next renewal date, if any, under the policies or 1 year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policies;

(ii) make diligent efforts to provide all known insureds, or group policyholders with respect to group policies, 30 days' notice of the termination of the benefits provided; and

(iii) make available substitute coverage on an individual basis in accordance with subsection (6)(b) to each known insured, or owner if other than the insured, of an individual policy and to any individual formerly insured under a group policy who is not eligible for replacement group coverage, if the insured had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(b) (i) In providing the substitute coverage required under subsection (6)(a)(iii), the association may offer to reissue the terminated coverage or issue an alternative policy.

(ii) Reissued or alternative policies must be offered without requiring evidence of insurability and may not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure any reissued or alternative policy.

(c) (i) Alternative policies adopted by the association are subject to the approval of the commissioner. The association may adopt policies of various types for future reissuance without regard to any particular impairment or insolvency.

(ii) Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten.

(iii) Alternative policies issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(d) If the association elects to reissue terminated coverage at a premium different from that charged under the terminated policy, the premium must be set by:

(i) the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner; or

(ii) a court of competent jurisdiction.

(e) The association's obligation with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy ceases on the date the coverage or policy is replaced by another similar policy by the policyholder, insured, or association.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(3) thru (6); amd. Sec. 140, Ch. 575, L. 1981; amd. Sec. 5, Ch. 576, L. 1987.

Cross-References

Orders of rehabilitation, 33-2-1332.

Orders of liquidation, 33-2-1342.

33-10-221. Nomination of liquidator by association — notification given by liquidator. (1) The association may recommend a natural person to serve as a special deputy to act for the commissioner and under his supervision in the liquidation, rehabilitation, or supervision of any member insurer.

(2) The liquidator, rehabilitator, or supervisor of any impaired insurer may notify all interested persons of the effect of this part.

History: En. 40-5811, 40-5813 by Secs. 11, 13, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(4), 40-5813; amd. Sec. 140, Ch. 575, L. 1981.

33-10-222. Stay of proceedings — reopening default judgments. (1) All proceedings in which the impaired insurer is a party in any court in this state shall be stayed 60 days from the date an order of liquidation, rehabilitation, or supervision is final to permit proper legal action by the association on any matters germane to its powers or duties.

(2) As to a judgment under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

History: **En. 40-5819 by Sec. 19, Ch. 245, L. 1974; R.C.M. 1947, 40-5819; amd. Sec. 140, Ch. 575, L. 1981.**

Cross-References

Default judgments — setting aside, Rule 55(c), M.R.Civ.P. (see Title 25, ch. 20).

Orders of rehabilitation, 33-2-1332.

Orders of liquidation, 33-2-1342.

33-10-223. Assignment by beneficiaries — subrogation. (1) Any person receiving benefits under this part shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this part whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

(2) The subrogation rights of the association under this section shall have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this part.

History: **En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(9).**

33-10-224. Extent of liability. The benefits for which the association may become liable may not exceed the lesser of:

(1) the contractual obligations of the impaired insurer for which the insurer becomes or would have become liable if it were not an impaired or insolvent insurer; or

(2) (a) with respect to any one life, regardless of the number of policies or contracts:

(i) $300,000 in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) $100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) $100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(b) with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the beneficiaries of each individual, if deceased, in the aggregate, $100,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values. However, the association is not liable to expend more than $300,000 in the aggregate with respect to any one individual under subsection (2)(a) and this subsection.

(c) with respect to any one contract holder covered by any unallocated annuity contract not included in subsection (2)(b), $5 million in benefits, irrespective of the number of contracts held by that contract holder.

History: **En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(10); amd. Sec. 6, Ch. 576, L. 1987; amd. Sec. 62, Ch. 596, L. 1993.**

33-10-225. Association as creditor — use of assets. (1) For the purpose of carrying out its obligations under this part, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to 33-10-223.

(2) All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this part. Assets attributable to covered policies, as used in this section, is that proportion of the assets which the reserves that should

have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

History: **En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(3).**

Cross-References

Assets from liquidation, 33-2-1363.

33-10-226. Distribution of ownership rights — distribution to shareholders. (1) Prior to the termination of any liquidation, rehabilitation, or supervision proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyowners of the impaired insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

History: **En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(4); amd. Sec. 140, Ch. 575, L. 1981.**

Cross-References

Assets from liquidation, 33-2-1363.

33-10-227. Assessments — abatement — basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at the times and for the amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There are two classes of assessments, as follows:

(a) Class A assessments must be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments must be made to the extent necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220(1) with regard to an impaired insurer.

(3) (a) The amount of any Class A assessment for each account must be determined by the board. The amount of any Class B assessment must be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bear to the premiums received by the insurer on all covered policies.

(b) Class B assessments against member insurers for each account must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to the premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired insurer may not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account may not in any

one calendar year exceed 2% of the insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which the assessment is abated or deferred must be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon thereafter as permitted by this part.

(6) If a 1% assessment for any subaccount of the life insurance account and the annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (3)(b), the board shall assess all subaccounts of the life insurance account and the annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection (4).

(7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(8) It is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in that form and for the amount, if any, and period of time that the commissioner may approve.

History: En. 40-5809 by Sec. 9, Ch. 245, L. 1974; R.C.M. 1947, 40-5809; amd. Sec. 7, Ch. 576, L. 1987; amd. Sec. 69, Ch. 596, L. 1993.

33-10-228. Suspension for failure to pay — forfeiture — appeal from board actions. (1) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed 5% of the unpaid assessment per month, but no forfeiture shall be less than $100 per month.

(2) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

History: En. 40-5811 by Sec. 11, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(2), (3).

Cross-References

Hearings by Commissioner, 33-1-701.

Judicial review of Commissioner's orders, 33-1-711.

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

33-10-229. Repealed. Sec. 71, Ch. 596, L. 1993.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(6); amd. Sec. 18, Ch. 198, L. 1979.

33-10-230. Tax — writeoffs of certificates of contribution. (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution for a Class B assessment only as an asset in the form approved by the commissioner pursuant to 33-10-227(9), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

(a) 100% for calendar year of issuance;
(b) 80% for the first calendar year after year of issuance;
(c) 60% for second calendar year after year of issuance;
(d) 40% for third calendar year after year of issuance;
(e) 20% for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above against its premium tax liability to this state accrued with respect to business transacted in the calendar year.

(3) Any sums acquired by refund, pursuant to 33-10-227(7), from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above and are not then needed for purposes of this part must be paid by the association to the commissioner and deposited by the commissioner with the state treasurer for credit to the general fund of this state.

History: En. 40-5817 by Sec. 17, Ch. 245, L. 1974; R.C.M. 1947, 40-5817; amd. Sec. 8, Ch. 576, L. 1987; amd. Sec. 70, Ch. 596, L. 1993.

Cross-References

Tax on premiums, 33-2-705.

CHAPTER 11

LIABILITY RISK RETENTION AND PURCHASING GROUPS

Part 1 — General Provisions

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Part 1

General Provisions

33-11-101. Purpose. The purpose of this part is to regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986 (15 U.S.C. 3901, et seq.).

History: En. Sec. 1, Ch. 249, L. 1987.

33-11-102. Definitions. As used in this part, the following definitions apply:

(1) "Completed operations liability" means:

(a) liability arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:

(i) a person who performs that work; or

(ii) a person who hires an independent contractor to perform that work; and

(b) liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability.

(2) "Domicile", for purposes of determining the state where a purchasing group is domiciled, means:

(a) for a corporation, the state where the purchasing group is incorporated; and

(b) for an unincorporated entity, the state of its principal place of business.

(3) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to:

(a) meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(b) pay other obligations in the normal course of business.

(4) "Insurance" means primary insurance, excess insurance, reinsurance, surplus line insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this state.

(5) (a) "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to other persons resulting from or arising out of:

(i) a business, whether profit or nonprofit, trade, product, service (including professional service), premises, or operation; or

(ii) an activity of any state or local government or an agency or political subdivision of state or local government.

(b) The term does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the federal Employers' Liability Act, 45 U.S.C. 51 through 60. As used in this subsection, "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from personal, familial, or household responsibilities or activities rather than from responsibilities or activities referred to in subsection (5)(a).

(6) "Plan of operation or a feasibility study" means an analysis that presents the expected activities and results of a risk retention group, including at a minimum:

(a) the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(b) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent this experience is reasonably available;

(c) pro forma financial statements and projections;

(d) appropriate opinions by a qualified independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(e) identification of management, underwriting procedures, managerial oversight methods, and investment policies; and

(f) other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state where the risk retention group is chartered.

(7) "Purchasing group" means a group that:

(a) has as one of its purposes the purchase of liability insurance on a group basis;

(b) purchases liability insurance only for its group members and only to cover their similar or related liability exposure, as described in subsection (7)(c);

(c) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, service, premises, or operation; and

(d) is domiciled in any state.

(8) "Risk retention group" means a corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

(a) whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members;

(b) that is organized for the primary purpose of conducting the activity described under subsection (8)(a);

(c) (i) that is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) that, before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance regulatory official of at least one state that it satisfied the capitalization requirements of that state. However, the group is considered to be a risk retention group only if it has been engaged in business continuously since January 1, 1985, and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability. For purposes of this subsection (8), "product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product but does not include the liability of any person for those damages if the product involved was in the possession of that person when the incident giving rise to the claim occurred.

(d) that does not exclude any person from membership in the group solely to provide to members of the group a competitive advantage over the person;

(e) (i) that has as its members only persons who have an ownership interest in the group and that has as its owners only persons who are members and who are provided insurance by the risk retention group; or

(ii) that has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;

(f) whose members are engaged in businesses or activities that are similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, service, premises, or operation;

(g) whose activities do not include the provision of insurance other than:

(i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) reinsurance with respect to the liability of any other risk retention group or member of the other group that is engaged in businesses or activities so that the group or member meets the requirement described in subsection (8)(f) for membership in the risk retention group that provides the reinsurance; and

(h) whose name includes the phrase "risk retention group".

(9) "State" means any state of the United States or the District of Columbia.

History: En. Sec. 2, Ch. 249, L. 1987; amd. Sec. 41, Ch. 379, L. 1995.

33-11-103. Chartering — licensing — plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only casualty insurance pursuant to the insurance laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners and in diskette form, if required by the commissioner, and completed in accordance with its instructions and the national association of insurance commissioners' accounting practices and procedures manual.

History: En. Sec. 3, Ch. 249, L. 1987; amd. Sec. 63, Ch. 596, L. 1993.

33-11-104. Risk retention groups not chartered in this state. A risk retention group chartered in a state other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) a statement identifying the state or states where the risk retention group is chartered and authorized as a casualty insurer, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner requires to verify that the risk retention group is qualified under 33-11-102(8);

(b) a copy of its plan of operation or a feasibility study and revisions of the plan or study submitted to its state of domicile. However, this provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance that was defined in the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by Public Law 99-563, approved on October 27, 1986, and that was offered before that date by a risk retention group that had been chartered and operated for not less than 3 years before that date; and

(c) a statement of registration that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or by a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) a copy of each examination of the risk retention group as certified by the insurance regulatory official of the state in which the examination was conducted or public official conducting the examination;

(c) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) any information as may be required to verify the group's continuing qualification as a risk retention group under 33-11-102(8).

(3) (a) Each risk retention group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state and shall report to the commissioner the net premiums written for risks resident or located within this state. The risk retention group is subject to taxation and any applicable interest, fines, and penalties for nonpayment that apply to foreign admitted insurers.

(b) To the extent that an insurance producer is used, the insurance producer shall report to the commissioner the premiums of direct business for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that an insurance producer is used, the insurance producer shall keep a complete and separate record of all policies procured from each risk retention group. The record is open to examination by the commissioner, as provided in 33-1-408. The records must, for each policy and each kind of insurance provided under the policy, include the limit of liability, the time period covered, the effective date, the name of the risk retention group that issued the policy, the gross premium charged, and the amount of return premiums, if any.

(4) Each risk retention group, its insurance producers, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding the risk retention group's conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner. The examination must be coordinated to avoid unjustified

repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under subsection (6).

(12) Upon completion of registration requirements, the commissioner shall issue to the risk retention group a proper certificate of registration.

(13) A risk retention group that violates any provision of this chapter is subject to fines and penalties, including revocation of the right to do business in this state, applicable to licensed insurers generally.

History: En. Sec. 4, Ch. 249, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 14, Ch. 451, L. 1993; amd. Sec. 64, Ch. 596, L. 1993; amd. Sec. 42, Ch. 379, L. 1995.

33-11-105. Compulsory associations. (1) A risk retention group may not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any guaranty fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations, mandatory liability pools, and similar mechanisms.

(3) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or from a risk retention group, the risks, wherever resident or located, may not be covered by any insurance guaranty fund or similar mechanism in this state.

(4) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state may be covered by the state guaranty fund, subject to Title 33, chapter 10, part 1.

History: En. Sec. 5, Ch. 249, L. 1987; amd. Sec. 56, Ch. 10, L. 1993; amd. Sec. 65, Ch. 596, L. 1993.

33-11-106. Countersignature not required. A policy of insurance issued to a risk retention group or member of that group need not be countersigned as provided in 33-17-1111.

History: En. Sec. 6, Ch. 249, L. 1987.

33-11-107. Purchasing groups — exemption from certain laws relating to group purchase of insurance. A purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Act of 1986 (15 U.S.C. 3901, et seq.) is exempt from any law of this state relating to the formation of groups for the purchase of insurance, prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer is exempt from any law of this state that prohibits providing or offering to provide to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group is subject to all other applicable laws of this state.

History: En. Sec. 7, Ch. 249, L. 1987.

33-11-108. Notice and registration requirements of purchasing groups. (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

(a) identifies the state where the group is domiciled and all other states in which the group intends to do business;

(b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) identifies the insurer from which the purchasing group intends to purchase its insurance and the domicile of that insurer;

(d) identifies the Montana-licensed insurance producer or Montana-licensed surplus lines insurance producer through which the purchasing group intends to place its business;

(e) identifies the principal place of business of the purchasing group;

(f) provides information required by the commissioner to verify that the purchasing group is qualified under 33-11-102(7); and

(g) identifies the person or persons controlling the activities of the group and includes biographical information on the person or persons.

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process. However, the requirements do not apply in the case of a purchasing group:

(a) (i) that was domiciled before April 2, 1986, in any state of the United States; and

(ii) that was domiciled on and after October 27, 1986, in any state of the United States;

(b) (i) that, before October 27, 1986, purchased insurance from an insurer licensed in any state; and

(ii) that, since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) that was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by Public Law 99-563, approved on October 27, 1986; and

(d) that does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986.

(3) Upon completion of registration requirements, the commissioner shall issue a proper certificate of registration to the purchasing group.

History: En. Sec. 8, Ch. 249, L. 1987; amd. Sec. 3, Ch. 180, L. 1991; amd. Sec. 15, Ch. 451, L. 1993; amd. Sec. 66, Ch. 596, L. 1993; amd. Sec. 43, Ch. 379, L. 1995.

33-11-109. Restriction on insurance purchased by purchasing groups. (1) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not authorized in the state where the purchasing group is located, unless the purchase is effected through a licensed insurance producer acting pursuant to the surplus lines laws and regulations of that state.

(2) For purposes of subsection (1), the state where a purchasing group is located is each state where a member of the purchasing group has a risk resident, located, or to be performed.

(3) A purchasing group that obtains liability insurance from an insurer not admitted in this state or from a risk retention group shall inform each of the members of the group who have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state and that the insurer or risk retention group may not be subject to all insurance laws and regulations of this state.

(4) A purchasing group may not purchase insurance that provides for a deductible or self-insured retention applicable to the group as a whole. Coverage may provide for a deductible or self-insured retention applicable to individual members.

(5) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits that are applicable to all purchases of group insurance.

History: En. Sec. 9, Ch. 249, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 67, Ch. 596, L. 1993.

33-11-110. Taxation of purchasing group. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing group must be:

(1) imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes and taxes on premiums paid to surplus lines insurers and authorized insurers, pursuant to 33-2-311 and 33-2-705, respectively; and

(2) paid by the authorized or surplus lines insurers and, if not paid by them, paid by the insurance producer for the purchasing group and, if not paid by the insurance producer, paid by the purchasing group and, if not paid by the purchasing group, paid by each of its members.

History: En. Sec. 34, Ch. 596, L. 1993.

33-11-111 through 33-11-120 reserved.

33-11-121. Administrative and procedural authority regarding risk retention groups and purchasing groups. The commissioner is authorized to use any powers established under this title to enforce the laws of this state so long as those powers are not specifically preempted by the federal Liability Risk Retention Act of 1986 (15 U.S.C. 3901, et seq.). The commissioner's powers include but are not limited to the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the commissioner may rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

History: En. Sec. 10, Ch. 249, L. 1987.

33-11-122. Penalties. A risk retention group that violates any provision of this part is subject to fines and penalties applicable to licensed insurers generally, including revocation of its license to do business in this state.

History: En. Sec. 11, Ch. 249, L. 1987.

33-11-123. Duty of insurance producers to obtain license. A person acting or offering to act as an insurance producer for a risk retention group or purchasing group that solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state shall, before commencing such activity, obtain a license from the commissioner.

History: **En. Sec. 12, Ch. 249, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.**

33-11-124. Enforceability of orders issued in United States district court. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance or operating in any state, territory, or possession of the United States upon a finding that such a group is in a hazardous financial condition is enforceable in the courts of this state.

History: **En. Sec. 13, Ch. 249, L. 1987.**

33-11-125. Rules and regulations. The commissioner may make and amend any reasonable rules relating to risk retention groups and purchasing groups necessary or desirable to carry out the provisions of this part.

History: **En. Sec. 14, Ch. 249, L. 1987.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 12

INSURER INVESTMENTS

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Part 1
General Provisions

Part Compiler's Comments

Effective Date: Section 52, Ch. 304, L. 1999, provided that this part was effective July 1, 1999.

33-12-101. Purpose and scope. (1) The purpose of this chapter is to protect the interests of insureds by promoting insurer solvency and financial strength. This purpose will be accomplished through the application of investment standards that facilitate a reasonable balance of the following objectives:

(a) to preserve principal;

(b) to ensure reasonable diversification as to type of investment, issuer, and credit quality; and

(c) to allow insurers to allocate investments in a manner consistent with principles of prudent investment management to achieve an adequate return so that obligations to insureds are adequately met and financial strength is sufficient to cover reasonably foreseeable contingencies.

(2) This chapter applies only to investments and investment practices of domestic insurers and United States branches of alien insurers entered through this state. This chapter does not apply to separate accounts of an insurer.

History: En. Sec. 1, Ch. 304, L. 1999.

33-12-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Acceptable collateral" means:

(a) (i) as to securities lending transactions and for the purpose of calculating the counterparty exposure amount, cash, cash equivalents, letters of credit, or direct obligations of or securities that are fully guaranteed as to principal and interest by the government of the United States, by any agency of the United States, by the federal national mortgage association, or by the federal home loan mortgage corporation; and

(ii) as to lending foreign securities, sovereign debt rated 1 by the SVO;

(b) as to repurchase transactions, cash, cash equivalents, and direct obligations of or securities that are fully guaranteed as to principal and interest by the government of the United States, by an agency of the United States, by the federal national mortgage association, or by the federal home loan mortgage corporation; and

(c) as to reverse repurchase transactions, cash and cash equivalents.

(2) "Acceptable private mortgage insurance" means insurance written by a private insurer protecting a mortgage lender against loss occasioned by a mortgage

loan default and issued by a licensed mortgage insurance company, with an SVO 1 designation or a rating issued by a nationally recognized statistical rating organization equivalent to an SVO 1 designation, that covers losses up to an 80% loan-to-value ratio.

(3) "Accident and health insurance" means insurance protection that provides payment of benefits for covered sickness or accidental injury, excluding credit insurance, disability insurance, accidental death and dismemberment insurance, and long-term care insurance.

(4) "Accident and health insurer" means a licensed life or health insurer or health service corporation whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutorily required reserves.

(5) (a) "Admitted assets" means, subject to subsection (5)(b), assets determined in accordance with the requirements of 33-2-501.

(b) The term does not include assets of separate accounts. The investments of separate accounts are not subject to the provisions of this chapter.

(6) "Affiliate" has the meaning provided in 33-2-1101.

(7) (a) "Asset-backed security" means a security or other instrument, excluding a mutual fund, evidencing an interest in or the right to receive payments from or payable from distributions on an asset, a pool of assets, or specifically divisible cash flows that are legally transferred to a trust or another special purpose bankruptcy-remote business entity, on the following conditions:

(i) the trust or other business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights, and engaging in activities required to service the assets or rights and any credit enhancement or support features held by the trust or other business entity; and

(ii) the assets of the trust or other business entity consist solely of interest-bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights.

(b) However, the existence of credit enhancements, such as letters of credit, guarantees, or support features, such as swap agreements, may not cause a security or other instrument to be ineligible as an asset-backed security.

(8) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not for profit.

(9) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number. The predetermined number is sometimes called the strike rate or strike price.

(10) "Capital and surplus" means the sum of the capital and surplus of the insurer required to be shown on the most recent statutory financial statement of the insurer required to be filed with the commissioner.

(11) "Cash equivalents" means short-term, highly rated, and highly liquid investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk of change in value. Cash equivalents include government money market mutual funds and class one money market mutual funds.

(12) "Class one bond mutual fund" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office or any successor publication.

(13) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office or any successor publication.

(14) "Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor.

(15) "Construction loan" means a loan for a term of less than 3 years that is made for financing the cost of construction of a building or other improvement to real estate and that is secured by the real estate.

(16) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise, unless the power is the result of an official position with a corporation or a corporate office held by the person. Presumption of control is pursuant to 33-12-108.

(17) "Counterparty exposure amount" means the net amount of credit risk attributable to a derivative instrument, pursuant to 33-12-109, entered into with a business entity other than through a qualified exchange or qualified foreign exchange or cleared through a qualified clearinghouse. The derivative instrument is also known as an over-the-counter derivative instrument.

(18) "Covered" means that an insurer:

(a) owns or can immediately acquire, through the exercise of options, warrants, or already-owned conversion rights, the underlying interest in order to fulfill or secure its obligations under a call option, cap, or floor it has written; or

(b) has set aside, under a custodial or escrow agreement, cash or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written in an income generation transaction.

(19) "Credit tenant loan" means a mortgage loan that is made primarily in reliance on the credit standing of a major tenant, structured with an assignment of the rental payments to the lender with real estate pledged as collateral in the form of a first lien.

(20) (a) "Derivative instrument" means an agreement, an option, an instrument, or a series or combination of agreements, options, or instruments:

(i) to make or take delivery of or assume or relinquish a specified amount of one or more underlying interests or to make a cash settlement in lieu of delivery; or

(ii) that has a price, level, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(b) (i) Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar to the enumerated instruments or any series or combination of the enumerated instruments and any agreements, options, or instruments permitted under rules adopted pursuant to 33-12-111.

(ii) Derivative instruments do not include an investment authorized by 33-12-203 through 33-12-209, 33-12-211, and 33-12-305 through 33-12-309.

(21) "Derivative transaction" means a transaction involving the use of one or more derivative instruments.

(22) "Direct" or "directly", when used in connection with an obligation, means that the designated obligor is primarily liable on the instrument representing the obligation.

(23) "Dollar roll transaction" means two simultaneous transactions with different settlement dates that are no more than 96 days apart, so that in the transaction with the earlier settlement date, an insurer sells to a business entity, and in the other transaction, the insurer is obligated to purchase from the same business entity, substantially similar securities of the following types:

(a) asset-backed securities issued, assumed, or guaranteed by the government national mortgage association, the federal national mortgage association, or the federal home loan mortgage corporation or their successors; and

(b) other asset-backed securities referred to in section 106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r-1), as amended.

(24) "Domestic jurisdiction" means the United States, any state, Canada, any province of Canada, or any political subdivision of a state or province.

(25) "Equity interest" means any of the following that are not rated credit instruments:

(a) common stock;

(b) preferred stock;

(c) trust certificate;

(d) equity investment in an investment company other than a money market mutual fund or a class one bond mutual fund;

(e) investment in a common trust fund of a bank regulated by a federal or state agency;

(f) an ownership interest in minerals, oil, or gas, the rights to which have been separated from the underlying fee interest in the real estate where the minerals, oil, or gas is located;

(g) instruments that are mandatorily, or at the option of the issuer, convertible to equity;

(h) limited partnership interests and those general partnership interests authorized under 33-12-104(4);

(i) member interests in limited liability companies;

(j) warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired; or

(k) instruments that would be rated credit instruments except for the provisions of subsection (70)(b).

(26) "Equivalent securities" means:

(a) in a securities lending transaction, securities that are identical to the loaned securities in all features including the amount of the loaned securities, except as to certificate number if held in physical form, but if any different security is exchanged for a loaned security by recapitalization, merger, consolidation, or other corporate action, the different security is considered to be the loaned security;

(b) in a repurchase transaction, securities that are identical to the purchased securities in all features including the amount of the purchased securities, except as to the certificate number if held in physical form; or

(c) in a reverse repurchase transaction, securities that are identical to the sold securities in all features including the amount of the sold securities, except as to the certificate number if held in physical form.

(27) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a price, level, performance, or value of one or more underlying interests.

(28) "Foreign currency" means a currency other than that of a domestic jurisdiction.

(29) (a) "Foreign investment" means an investment in a foreign jurisdiction, or an investment in a person, real estate, or asset domiciled in a foreign jurisdiction, that is substantially of the same type as those eligible for investment under part 2 of this chapter, 33-12-301 through 33-12-306, 33-12-308, 33-12-310 through 33-12-312, and this part.

(b) An investment may not be considered to be foreign if the issuing person, qualified primary credit source, or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless:

(i) the issuing person is a shell business entity; and

(ii) the investment is not assumed, accepted, guaranteed or insured, or otherwise backed by a domestic jurisdiction or a person that is not a shell business entity and that is domiciled in a domestic jurisdiction.

(30) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.

(31) "Forward" means an agreement, other than a future, to make or take delivery of or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests.

(32) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make or take delivery of or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests.

(33) "Government money market mutual fund" means a money market mutual fund that at all times:

(a) invests only in obligations issued, guaranteed, or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and

(b) qualifies for investment without a reserve under the Purposes and Procedures of the Securities Valuation Office or any successor publication.

(34) "Government-sponsored enterprise" means a:

(a) governmental agency; or

(b) corporation, limited liability company, association, partnership, joint stock company, joint venture, trust, or other entity or instrumentality organized under the laws of any domestic jurisdiction to accomplish a public policy or other governmental purpose.

(35) "Guaranteed or insured", when used in connection with an obligation acquired under this chapter, means that the guarantor or insurer has agreed to:

(a) perform or insure the obligation of the obligor or purchase the obligation; or

(b) be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity, or sufficient liquidity to enable the obligor to pay the obligation in full.

(36) "Hedging transaction" means a derivative transaction that is entered into and maintained to reduce:

(a) the risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring; or

(b) the currency exchange rate risk or the degree of exposure as to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring.

(37) "High-grade investment" means a rated credit instrument rated 1 or 2 by the SVO.

(38) “Highly rated” means an investment rated “P-1” by Moody’s investors service, inc. or “A-1” by Standard and Poor’s division of the McGraw Hill companies, inc. or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO.

(39) “Income” means, as to a security, interest, accrual of discount, dividends, or other distributions, such as rights, tax or assessment credits, warrants, and distributions in kind.

(40) “Income generation transaction” means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return.

(41) “Insurance future” means a future relating to an index or pool that is based on insurance-related items.

(42) “Insurance futures option” means an option on an insurance future.

(43) “Investment company” means an investment company as defined in section 80a-3 of the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), as amended, and a person described in section 80a-3(c) of that act.

(44) “Investment company series” means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.

(45) “Investment practices” means transactions of the types described in 33-12-208, 33-12-210, 33-12-308, or 33-12-310.

(46) “Investment strategies” means the techniques and methods used by an insurer to meet its investment objectives, such as active bond portfolio management, passive bond portfolio management, interest rate anticipation, growth investing, and value investing.

(47) “Investment subsidiary” means a subsidiary of an insurer engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer if each subsidiary agrees to limit its investment in any asset so that its investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations or avoid any other provisions of this chapter applicable to the insurer.

(48) “Letter of credit” means a clean, irrevocable, and unconditional letter of credit issued or confirmed by and payable and presentable at a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the Purposes and Procedures of the Securities Valuation Office or any successor publication.

(49) “Limited liability company” means a business organization, excluding partnerships and ordinary business corporations, organized or operating under the laws of the United States or any state that limits the personal liability of investors to the equity investment of the investor in the business entity.

(50) “Lower-grade investment” means a rated credit instrument rated 4, 5, or 6 by the SVO.

(51) “Market value” means:

(a) as to cash and letters of credit, the amounts of cash or a letter of credit; and

(b) as to a security, as of any date, the price for the security on that date obtained from a generally recognized source or the most recent quotation from a generally recognized source or, to the extent that a generally recognized source does not exist, the price for the security as determined in good faith by the parties to a transaction, plus accrued but unpaid income on a security to the extent not included in the price as of that date.

(52) “Medium-grade investment” means a rated credit instrument rated 3 by the SVO.

(53) "Money market mutual fund" means a mutual fund that meets the conditions of 17 CFR 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), as amended or renumbered.

(54) "Mortgage loan" means an obligation secured by a mortgage, deed of trust, trust deed, or other consensual lien on real estate.

(55) "Multilateral development bank" means an international development organization of which the United States is a member.

(56) "Mutual fund" means an investment company or an investment company series that is registered with the United States securities and exchange commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), as amended.

(57) "NAIC" means the national association of insurance commissioners.

(58) "Obligation" means a bond, note, debenture, trust certificate including an equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases, and other evidence of indebtedness for the payment of money (or participations, certificates, or other evidences of an interest in any of the foregoing), whether constituting a general obligation of the issuer or payable only out of certain revenue or certain funds pledged or otherwise dedicated for payment.

(59) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend or terminate, or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests.

(60) "Person" has the meaning provided in 33-1-202.

(61) "Potential exposure" means the amount determined in accordance with the NAIC Annual Statement Instructions.

(62) "Preferred stock" means preferred, preference, or guaranteed stock of a business entity authorized to issue the stock that has a preference in liquidation over the common stock of the business entity.

(63) "Qualified bank" means:

(a) a national bank, state bank, or trust company that at all times is adequately capitalized as determined by standards adopted by United States banking regulators and that is either regulated by state banking laws or is a member of the federal reserve system; or

(b) a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as a bank or trust company by that country's government or an agency of that government and that at all times is adequately capitalized as determined by the standards adopted by international banking authorities.

(64) "Qualified business entity" means a business entity that is:

(a) an issuer of obligations or preferred stock that is rated 1 or 2 by the SVO or an issuer of obligations, preferred stock, or derivative instruments that are rated the equivalent of 1 or 2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or

(b) a primary dealer in United States government securities recognized by the federal reserve bank of New York.

(65) "Qualified clearinghouse" means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange, which provides clearing services, including acting as a counterparty to each of the parties to a transaction so that the parties no longer have a credit risk as to each other.

(66) "Qualified exchange" means:

(a) a securities exchange registered as a national securities exchange or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. 78, et seq.), as amended;

(b) a board of trade or commodities exchange designated as a contract market by the commodity futures trading commission or its successor;

(c) private offerings, resales, and trading through automated linkages;

(d) a designated offshore securities market as defined in securities exchange commission regulation S, 17 CFR part 230, as amended; or

(e) a qualified foreign exchange.

(67) "Qualified foreign exchange" means a foreign exchange, board of trade, or contract market located outside the United States or its territories or possessions:

(a) that has received regulatory comparability relief under commodity futures trading commission rule 30.1 (as set forth in appendix C to part 30 of the regulations, 17 CFR part 30);

(b) that is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under commodity futures trading commission rule 30.1 (as set forth in appendix C to part 30 of the regulations, 17 CFR part 30) as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or

(c) upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's office of general counsel, provided that an exchange, board of trade, or contract market that qualifies as a qualified foreign exchange only under this subsection (67) is a qualified foreign exchange as to foreign stock index futures contracts that are the subject of no-action relief.

(68) "Qualified guarantor" means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.

(69) "Qualified primary credit source" means the credit source to which an insurer looks for payment as to an investment and against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.

(70) (a) "Rated credit instrument" means a contractual right to receive cash or another rated credit instrument from another entity if the instrument:

(i) is rated or required to be rated by the SVO;

(ii) in the case of an instrument with a maturity of 397 days or less, is issued, guaranteed, or insured by an entity that is rated by, or another obligation of the entity is rated by, the SVO or by a nationally recognized statistical rating organization recognized by the SVO;

(iii) in the case of an instrument with a maturity of 90 days or less, is issued by a qualified bank;

(iv) is a share of a class one bond mutual fund; or

(v) is a share of a money market mutual fund.

(b) The term does not include:

(i) an instrument that is mandatorily or at the option of the issuer convertible to an equity interest; or

(ii) a security that has a par value and whose terms provide that the issuer's net obligation to repay all or part of the security's par value is determined by reference to the performance of an equity, a commodity, a foreign currency, an index of equities, commodities, foreign currencies, or combinations of equities, commodities, and foreign currency.

(71) (a) "Real estate" means:

(i) real property;

(ii) interests in real property, such as leaseholds, minerals, oil, and gas, that have not been separated from the underlying fee interest;

(iii) improvements and fixtures located on or in real property; and

(iv) the seller's equity in a contract providing for a deed of real estate.

(b) As to a mortgage on a leasehold estate, real estate includes the leasehold estate only if it has an unexpired term, including renewal options exercisable at the option of the lessee, extending beyond the scheduled maturity date of the obligation that is secured by a mortgage on the leasehold estate by a period equal to at least 20% of the original term of the obligation or 10 years, whichever is greater.

(72) "Replication transaction" means a derivative transaction that is intended to replicate the performance of one or more assets that an insurer is authorized to acquire under this chapter. A derivative transaction that is entered into as a hedging transaction may not be considered a replication transaction.

(73) "Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.

(74) "Required liabilities" means total liabilities required to be reported on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(75) "Residential mortgage loan" means a loan primarily secured by a mortgage on real estate improved with a residence for no more than four families.

(76) "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

(77) "Secured location" means the contiguous real estate owned by one person.

(78) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.

(79) "Series company" means an investment company that is organized as a series company, as defined in rules adopted under the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), as amended.

(80) "Shell business entity" means a business entity having no economic substance, except as a vehicle for owning interests in assets issued, owned, or previously owned by a person domiciled in a foreign jurisdiction.

(81) "Short-term" means investments with a remaining term to maturity of 90 days or less.

(82) "Sinking fund stock" means preferred stock that:

(a) is subject to a mandatory sinking fund or similar arrangement that will provide for the redemption or open market purchase of the entire issue over a period not longer than 40 years from the date of acquisition; and

(b) provides for mandatory sinking fund installments or open market purchases commencing not more than 10 ½ years from the date of issue, with the sinking fund installments providing for the purchase or redemption, on a cumulative basis commencing 10 years from the date of issue, of at least 2.5% a year of the original number of shares of that issue of preferred stock.

(83) "State" has meaning provided in 33-1-201.

(84) "Substantially similar securities" means securities that meet all criteria for substantially similar specified in the NAIC Accounting Practices and Procedures Manual, as amended, and in an amount that constitutes good delivery form as determined from time to time by the public securities administration.

(85) "SVO" means the securities valuation office of the NAIC or any successor office established by the NAIC.

(86) "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, level, performance, or value of one or more underlying interests.

(87) "Total investment of the insurer" includes:

(a) direct investment by the insurer in an asset; and

(b) the insurer's proportionate share of an investment in an asset by an investment subsidiary of the insurer, which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership interest in the subsidiary.

(88) "Underlying interest" means the assets, liabilities, other interests, or a combination of assets, liabilities, or other interests underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities, or derivative instruments.

(89) "Unrestricted surplus" means the amount by which total admitted assets exceed 125% of the insurer's required liabilities.

(90) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

History: En. Sec. 2, Ch. 304, L. 1999.

33-12-103. General investment qualifications. (1) Insurers may acquire, hold, or invest in investments or engage in investment practices as set forth in this chapter. Investments not conforming to this chapter may not be admitted assets. Affiliate investments under 33-2-1113, other than those investments made by or on behalf of domestic insurers, are not subject to this provision.

(2) Subject to subsection (3), an insurer may not acquire or hold an investment as an admitted asset unless at the time of acquisition it is:

(a) (i) eligible for the payment or accrual of interest or discount, whether in cash or other securities;

(ii) eligible to receive dividends or other distributions; or

(iii) otherwise income-producing; or

(b) acquired under 33-12-207(3), 33-12-208, 33-12-210, 33-12-212, 33-12-307(3), 33-12-308, 33-12-310, or 33-12-311 or under the authority of sections of Montana law other than this chapter.

(3) An insurer may acquire or hold as admitted assets investments that do not otherwise qualify as provided in this chapter if the insurer has not acquired them for the purpose of circumventing any limitations contained in this chapter and if the insurer complies with the provisions of 33-12-105 and 33-12-108 and acquires the investments in the following circumstances:

(a) as payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness if taken to protect the insurer's interest in that investment;

(b) as realization on collateral for an obligation;

(c) in connection with an otherwise qualified investment or investment practice, as interest on or a dividend or other distribution related to the investment or investment practice, or in connection with the refinancing of the investment, in each case for no additional or only nominal consideration;

(d) under a lawful and bona fide agreement of recapitalization or voluntary or involuntary reorganization in connection with an investment held by the insurer; or

(e) under a bulk reinsurance, merger, or consolidation transaction approved by the commissioner if the assets constitute admissible investments for the ceding, merged, or consolidated companies.

(4) An investment or portion of an investment acquired by an insurer under subsection (3) must become a nonadmitted asset 3 years, or 5 years in the case of mortgage loans and real estate, from the date of its acquisition, unless within that period the investment has become a qualified investment under a provision of this chapter other than subsection (3). However, an investment acquired under an agreement of bulk reinsurance, merger, or consolidation may be qualified for a longer period if provided for in the plan for reinsurance, merger, or consolidation as approved by the commissioner. Upon application by the insurer and a showing that the nonadmission of an asset held under subsection (3) would materially injure the interests of the insurer, the commissioner may extend the period for admissibility for an additional reasonable period of time.

(5) Except as provided in subsections (6) and (8), an investment must qualify under this chapter if, on the date the insurer committed to acquire the investment or on the date of its acquisition, it would have qualified under this chapter. For the purposes of determining limitations contained in this chapter, an insurer shall give appropriate recognition to any commitments to acquire investments.

(6) (a) An investment held as an admitted asset by an insurer on July 1, 1999, that qualified under former law remains qualified as an admitted asset under this chapter.

(b) Each specific transaction constituting an investment practice of the type described in this chapter that was lawfully entered into by an insurer and was in effect on July 1, 1999, continues to be permitted under this chapter until its expiration or termination under its terms.

(7) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus relates to the amount required to be shown on the most recent statutory balance sheet of the insurer required to be filed with the commissioner. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount of its admitted assets the amount of the liability recorded on its statutory balance sheet for:

(a) the return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;

(b) cash received in a dollar roll transaction; and

(c) the amount reported as borrowed money in the most recently filed financial statement to the extent not included in subsections (7)(a) and (7)(b).

(8) An investment qualified, in whole or in part, for acquisition or holding as an admitted asset may be qualified or requalified at the time of acquisition or a later date, in whole or in part, under any other section if the relevant conditions contained in the other section are satisfied at the time of qualification or requalification.

(9) An insurer shall maintain documentation demonstrating that investments were acquired in accordance with this chapter.

(10) An insurer may not enter into an agreement to purchase securities in advance of their issuance for resale to the public as part of a distribution of the securities by the issuer or otherwise guarantee the distribution, except that an insurer may acquire privately placed securities with registration rights.

(11) Notwithstanding the provisions of this chapter, the commissioner, for good cause, may under the Montana Administrative Procedure Act order an insurer to nonadmit, limit, dispose of, withdraw from, or discontinue an investment or investment practice. The authority of the commissioner under this subsection is in addition to any other authority of the commissioner.

(12) Insurance futures and insurance futures options are not considered investments or investment practices for purposes of this chapter.

History: **En. Sec. 3, Ch. 304, L. 1999.**

33-12-104. Authorization of investments by board of directors. (1) An insurer's board of directors shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, and diversification of investments and that contains other specifications including investment strategies intended to ensure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus.

(2) The board of directors is ultimately responsible for investment decisions and shall review, at least annually, whether all investments acquired and held under this chapter have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(3) An insurer's board of directors or committee of the board of directors shall:

(a) on no less than a quarterly basis and more often if considered appropriate, receive and review a summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(b) on no less than an annual basis and more often if considered appropriate, review and revise, as appropriate, the written plan.

(4) In discharging its duties under this section, the board of directors may require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the plan referred to in subsection (1) may be made available on a regular basis to the board of directors.

(5) If an insurer does not have a board of directors, all references to the board of directors in this chapter are considered to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

(6) In discharging their duties under this section, the directors of an insurer shall perform their duties as provided in 35-1-418.

History: **En. Sec. 4, Ch. 304, L. 1999.**

33-12-105. Prohibited investments. (1) An insurer may not, directly or indirectly, without the prior written approval of the commissioner:

(a) invest in an obligation or security or make a guarantee for the benefit of or in favor of an officer or director of the insurer, except as provided in 33-12-106;

(b) invest in an obligation or security of, make a guarantee for the benefit of or in favor of, or make other investments in a business entity of which 10% or more of the voting securities or equity interests are owned directly or indirectly by or for the benefit of one or more officers or directors of the insurer, except as authorized in Title 33, chapter 2, part 11, or as provided in 33-12-106;

(c) engage on its own behalf or through one or more affiliates in a transaction or series of transactions designed to evade the prohibitions of this chapter; or

(d) except as provided in subsection (2), invest in or lend its funds upon the security of shares of its own stock.

(2) (a) An insurer may acquire shares of its own stock for the following purposes:

(i) conversion of a stock insurer into a mutual or reciprocal insurer or conversion of a mutual or reciprocal insurer into a stock insurer; or

(ii) issuance to the insurer's officers, employees, or agents in connection with a plan approved by the commissioner in connection with stock option and employee benefit plans.

(b) Shares of stock that are subject to subsection (2)(a) may not be admitted assets of the insurer.

(3) (a) An insurer may not, directly or indirectly, without the prior written approval of the commissioner invest in a partnership as a general partner, except that an insurer may make an investment as a general partner:

(i) if all other partners in the partnership are subsidiaries of the insurer;

(ii) for the purpose of:

(A) meeting cash calls committed to prior to July 1, 1999;

(B) completing those specific projects or activities of the partnership in which the insurer was a general partner as of July 1, 1999, that had been undertaken as of July 1, 1999; or

(C) making capital improvements to property owned by the partnership on July 1, 1999, if the insurer was a general partner as of July 1, 1999; or

(iii) in accordance with 33-12-103(3).

(b) Subsection (3)(a) does not prohibit a subsidiary or other affiliate of the insurer from becoming a general partner.

History: En. Sec. 5, Ch. 304, L. 1999.

33-12-106. Loans to officers and directors. (1) (a) Except as provided in subsection (2), an insurer may not, directly or indirectly, without the prior written approval of the commissioner:

(i) make a loan to an officer or director of the insurer or make another investment in a person in which the officer or director has any direct or indirect financial interest;

(ii) make a guarantee for the benefit of or in favor of an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest; or

(iii) enter into an agreement for the purchase or sale of property from or to an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest.

(b) For purposes of this section, an officer or director may not have a financial interest by reason of an interest that is held directly or indirectly through the ownership of equity interests representing less than 2% of all outstanding equity interests issued by a person that is a party to the transaction or solely by reason of that individual's position as a director or officer of a person that is a party to the transaction.

(c) This subsection (1) does not permit an investment that is prohibited by 33-12-105.

(d) This subsection (1) does not apply to a transaction between an insurer and any of its subsidiaries or affiliates that is entered into in compliance with Title 33, chapter 2, part 11, other than a transaction between an insurer and its officer or director.

(2) An insurer may, without the prior written approval of the commissioner, make any of the following:

(a) policy loans in accordance with the terms of the policy or contract and 33-12-211;

(b) advances to officers or directors for expenses reasonably expected to be incurred in the ordinary course of the insurer's business or guarantees associated with credit or charge cards issued or credit extended for the purpose of financing these expenses;

(c) loans secured by the principal residence of an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request if the loans comply with the requirements of 33-12-207 or 33-12-307 and the terms and conditions are the same as those generally available from unaffiliated third parties;

(d) secured loans to an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request if the loans:

(i) do not have a term exceeding 2 years;

(ii) are required to finance mortgage loans outstanding at the same time on the prior and new residences of the officer;

(iii) do not exceed an amount equal to the equity of the officer in the prior residence; and

(iv) are required to be fully repaid upon the earlier of the end of the 2-year period or the sale of the prior residence; or

(e) loans and advances to officers or directors made in compliance with state or federal law specifically related to the loans and advances by a regulated noninsurance subsidiary or affiliate of the insurer in the ordinary course of business and on terms no more favorable than available to other customers of the entity.

History: En. Sec. 6, Ch. 304, L. 1999.

33-12-107. Valuation of investments. For the purposes of this chapter, the value or amount of an investment acquired or held under this chapter or an investment practice engaged in under this chapter, unless otherwise specified in statute, must be the value at which assets of an insurer are required to be reported for statutory accounting purposes as determined in accordance with procedures prescribed in published accounting and valuation standards of the NAIC, including the Purposes and Procedures of the Securities Valuation Office, the Valuation of Securities Manual, the Accounting Practices and Procedures Manual, the Annual Statement Instructions, or any successor valuation procedures officially adopted by the NAIC.

History: En. Sec. 7, Ch. 304, L. 1999.

33-12-108. Presumption of control. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

History: En. Sec. 8, Ch. 304, L. 1999.

33-12-109. Credit risk attributable to derivative statement. (1) The amount of credit risk equals:

(a) the market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or

(b) zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

(2) If over-the-counter derivative instruments are entered into under a written master agreement that provides for netting of payments owed by the respective parties and the domiciliary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign jurisdiction listed in the Purposes and Procedures of the Securities Valuation Office as eligible for netting, the net amount of credit risk must be the greater of zero or the net sum of:

(a) the market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(b) the market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

(3) For open transactions, market value must be determined at the end of the most recent quarter of the insurer's fiscal year and must be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one or both parties.

History: En. Sec. 9, Ch. 304, L. 1999.

33-12-110. Special rated credit instrument. (1) (a) Subject to subsection (1)(b), a rated credit instrument is a special rated credit instrument if it is an instrument that is:

(i) structured so that if it is held until retired by or on behalf of the issuer, its rate of return, based on its purchase cost and any cash flow stream possible under the structure of the transaction, may become negative because of reasons other than the credit risk associated with the issuer of the instrument; or

(ii) an asset-backed security that:

(A) relies on cash flows from assets that are prepayable at par at any time;

(B) does not make payments of par that are fixed as to amount and timing; and

(C) has a negative rate of return at the time of acquisition if a prepayment threshold assumption is used with the prepayment threshold assumption defined as either:

(I) two times the prepayment expectation reported by a recognized, publicly available source as being the median of expectations contributed by broker dealers or other entities, except insurers, engaged in the business of selling or evaluating the securities or assets. The prepayment expectation used in this calculation must be, at the insurer's election, the prepayment expectation for passthrough securities of the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association or for other assets of the same type as the assets that underlie the asset-backed security, in either case with a gross weighted average coupon comparable to the gross weighted average coupon of the assets that underlie the asset-backed security.

(II) another prepayment threshold assumption specified by the commissioner by rule adopted under 33-12-111.

(b) A rated credit instrument may not be a special rated credit instrument under this section if it is:

(i) a share in a class one bond mutual fund;

(ii) an instrument, other than an asset-backed security, with payments of par value fixed as to amount and timing or callable but in any event payable only at par or greater and with interest or dividend cash flows that are based on either a fixed or variable rate determined by reference to a specified rate or index;

(iii) an instrument, other than an asset-backed security, that has a par value and is purchased at a price no greater than 110% of par;

(iv) an instrument, including an asset-backed security, with a rate of return that would become negative only as a result of a prepayment due to casualty, condemnation, economic obsolescence of collateral, or change of law;

(v) an asset-backed security that relies on collateral that meets the requirements of subsection (1)(b)(ii), the par value of which collateral:

(A) is not permitted to be paid sooner than one-half of the remaining term to maturity from the date of acquisition;

(B) is permitted to be paid prior to maturity only at a premium sufficient to provide a yield to maturity for the investment, considering the amount prepaid and reinvestment rates at the time of early repayment, at least equal to the yield to maturity of the initial investment; or

(C) is permitted to be paid prior to maturity at a premium at least equal to the yield of a treasury issue of comparable remaining life; or

(vi) an asset-backed security that relies on cash flows from assets that are not prepayable at any time at par, but is not otherwise governed by subsection (1)(b)(v), if the asset-backed security has a par value reflecting principal payments to be received if held until retired by or on behalf of the issuer and is purchased at a price no greater than 105% of the par amount.

(2) For purposes of subsection (1), if the asset-backed security is purchased in combination with one or more other asset-backed securities that are supported by identical underlying collateral, the insurer may calculate the rate of return for these specific combined asset-backed securities in combination. The insurer shall maintain documentation demonstrating that the securities were acquired and are continuing to be held in combination.

History: En. Sec. 10, Ch. 304, L. 1999.

33-12-111. Rules. The commissioner may adopt rules implementing the provisions of this chapter.

History: En. Sec. 11, Ch. 304, L. 1999.

33-12-112. Foreign and alien insurers. A foreign insurer or an alien insurer, as those terms are defined in 33-1-201, shall maintain its investments according to the laws of its domicile. For purposes of this section, an alien insurer shall claim as its domicile the state where it maintains its principal deposit.

History: En. Sec. 12, Ch. 304, L. 1999.

Part 2

Life and Health Insurers

Part Compiler's Comments

Effective Date: Section 52, Ch. 304, L. 1999, provided that this part was effective July 1, 1999.

33-12-201. Applicability. This part applies to the investments and investment practices of life and health insurers, subject to the provisions of 33-12-101(2).

History: En. Sec. 13, Ch. 304, L. 1999.

33-12-202. General three percent diversification — medium-grade and lower-grade investments — Canadian investments. (1) (a) Except as otherwise specified in this chapter, an insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under this chapter if, as a result of and after giving effect to the investment, the insurer would hold more than 3% of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

(b) The 3% limitation does not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(c) Asset-backed securities are subject to the limitations of subsection (1)(a). However, an insurer may not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity then held by the insurer would exceed 3% of its admitted assets.

(2) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under 33-12-203, 33-12-206, or 33-12-209 or counterparty exposure under 33-12-210(4) if, as a result of and after giving effect to the investment:

(i) the aggregate amount of medium-grade and lower-grade investments then held by the insurer would exceed 20% of its admitted assets;

(ii) the aggregate amount of lower-grade investments then held by the insurer would exceed 10% of its admitted assets;

(iii) the aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed 3% of its admitted assets;

(iv) the aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed 1% of its admitted assets; or

(v) the aggregate amount of medium-grade and lower-grade investments then held by the insurer that receive as cash income less than the equivalent yield for treasury issues with a comparative average life would exceed 1% of its admitted assets.

(b) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under 33-12-203, 33-12-206, or 33-12-209 or counterparty exposure under 33-12-210(4) if, as a result of and after giving effect to the investment:

(i) the aggregate amount of medium-grade and lower-grade investments issued, assumed, guaranteed, accepted, or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 1% of its admitted assets; or

(ii) the aggregate amount of lower-grade investments issued, assumed, guaranteed, accepted, or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 0.5% of its admitted assets.

(c) If an insurer attains or exceeds the limit of any one rating category referred to in this subsection (2), the insurer is precluded from acquiring investments in other rating categories subject to the specific and multicategory limits applicable to those investments.

(3) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, a Canadian investment authorized by this chapter if, as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed 40% of its admitted assets or if the aggregate amount of Canadian investments not acquired under 33-12-203(3) then held by the insurer would exceed 25% of its admitted assets.

(b) However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection (3)(a) must be increased by the greater of:

(i) the amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

(ii) 115% of the amount of the insurer's reserves and other obligations under contracts on lives or risks resident or located in Canada.

History: En. Sec. 14, Ch. 304, L. 1999.

33-12-203. Rated credit instruments. (1) Subject to the limitations of subsection (7), an insurer may acquire rated credit instruments in accordance with this section.

(2) Subject to the limitations of 33-12-202(2), an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(a) the United States; or

(b) a government-sponsored enterprise of the United States, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.

(3) (a) Subject to the limitations of 33-12-202(2), an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(i) Canada; or

(ii) a government-sponsored enterprise of Canada, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada.

(b) An insurer may not acquire an instrument under this subsection (3) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection (3) would exceed 40% of its admitted assets.

(4) (a) Subject to the limitations of 33-12-202(2), an insurer may acquire rated credit instruments, excluding asset-backed securities:

(i) issued by a government money market mutual fund, a class one money market mutual fund, or a class one bond mutual fund;

(ii) issued, assumed, guaranteed, or insured by a government sponsored enterprise of the United States other than those eligible under subsection (2);

(iii) issued, assumed, guaranteed, or insured by a state, if the instruments are general obligations of the state; or

(iv) issued by a multilateral development bank.

(b) However, an insurer may not acquire an instrument of any one fund, enterprise, entity, or state under this subsection (4) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise, entity, or state under this subsection (4) would exceed 10% of its admitted assets.

(5) Subject to the limitations of 33-12-202, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(a) the aggregate amount of preferred stocks then held by the insurer under this subsection (5) does not exceed 20% of its admitted assets; and

(b) the aggregate amount of preferred stocks then held by the insurer under this subsection (5) that are not sinking fund stocks or rated P-1 or P-2 by the SVO does not exceed 10% of its admitted assets.

(6) Subject to the limitations of 33-12-202, in addition to those investments eligible under subsections (2) through (5) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(7) An insurer may not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed 5% of its admitted assets.

History: En. Sec. 15, Ch. 304, L. 1999.

33-12-204. Insurer investment pools. (1) An insurer may acquire investments in investment pools that invest only in:

(a) (i) obligations that are rated 1 or 2 by the SVO or a nationally recognized statistical rating organization recognized by the SVO or in the absence of a 1 or 2 or equivalent rating, the issuer has outstanding obligations with an SVO rating of 1 or 2 or an equivalent rating and that have:

(A) remaining maturity of 397 days or less or a put option that entitles the holder to receive the principal amount of the obligation and the put option may be exercised through maturity at specified intervals not exceeding 397 days; or

(B) remaining maturity of 3 years or less and:

(I) a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index such as federal funds, prime rate, treasury bills, London interbank offered rate, or commercial paper; and

(II) is subject to no maximum limit if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(ii) government money market mutual funds or class one money market mutual funds; or

(iii) securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of 33-12-208, except the quantitative limitations of 33-12-208(4); or

(b) investments that an insurer may acquire under this chapter if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this chapter.

(2) For an investment in an investment pool to be qualified under this chapter, the investment pool may not:

(a) acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;

(b) borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of 33-12-208, except the quantitative limitations of 33-12-208(4); or

(c) permit the aggregate value of securities then loaned, sold to, purchased from, or invested in any one business entity under this section to exceed 10% of the total assets of the investment pool.

(3) The limitations of 33-12-202(1) do not apply to an insurer's investment in an investment pool. However, an insurer may not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(a) in any one investment pool would exceed 10% of its admitted assets;

(b) in all investment pools investing in investments permitted under subsection (1)(b) would exceed 25% of its admitted assets; or

(c) in all investment pools would exceed 35% of its admitted assets.

(4) For an investment in an investment pool to be qualified under this chapter, the manager of the investment pool:

(a) must be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(b) must be:

(i) the insurer, an affiliated insurer, a business entity affiliated with the insurer, a qualified bank, or a business entity registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.), as amended;

(ii) in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact; or

(iii) in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(c) shall compile and maintain detailed accounting records setting forth:

(i) the cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

(ii) a complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date, if any, and other appropriate designations; and

(iii) other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and

(d) shall maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement must:

(i) state and recognize the claims and rights of each participant;

(ii) acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

(iii) contain an agreement that the underlying assets of the investment pool may not be commingled with the general assets of the custodian qualified bank or any other person.

(5) The pooling agreement for each investment pool must be in writing and must provide that:

(a) an insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subsection (1)(a), the insurer and its subsidiaries or affiliates, any pension or profit-sharing plan of the insurer or its subsidiaries and affiliates, or in the case of a United States branch of an alien insurer, the affiliates or subsidiaries of its United States manager shall, at all times, hold 100% of the interests in the investment pool;

(b) the underlying assets of the investment pool may not be commingled with the general assets of the pool manager or any other person;

(c) in proportion to the aggregate amount of each pool participant's interest in the investment pool:

(i) each participant owns an undivided interest in the underlying assets of the investment pool; and

(ii) the underlying assets of the investment pool are held solely for the benefit of each participant;

(d) a participant or, in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor in interest may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(e) withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds must occur within a reasonable and customary period not to exceed 5 business days. Distributions under this section must be calculated in each case net of all then-applicable fees and expenses of the investment pool. The pooling agreement must provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

(i) in cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

(ii) in kind, a pro rata share of each underlying asset; or

(iii) in a combination of cash and in-kind distributions, a pro rata share in each underlying asset.

(f) the pool manager shall make the records of the investment pool available for inspection by the commissioner.

History: En. Sec. 16, Ch. 304, L. 1999.

33-12-205. Equity interests. (1) Subject to the limitations of 33-12-202, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.

(2) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section would exceed 20% of its admitted assets or the amount of equity interests then held by the insurer that are not listed on a qualified exchange would exceed 5% of its admitted assets. An accident and health insurer is subject to this section but is subject to the same aggregate limitation on equity interests as a property and casualty insurer under 33-12-305 and is also subject to the provisions of 33-12-312.

(3) An insurer may not acquire under the provisions of this section any investments that the insurer may acquire under 33-12-207.

(4) An insurer may not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within 6 months of the short sale.

History: **En. Sec. 17, Ch. 304, L. 1999.**

33-12-206. Tangible personal property under lease. (1) (a) Subject to the limitations of 33-12-202, an insurer may acquire tangible personal property or equity interests in tangible personal property located or used wholly or in part within a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by 33-12-104(4), joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments.

(b) Investments acquired under subsection (1)(a) are eligible only if:

(i) the property is subject to a lease or other agreement with a person whose rated credit instruments could be acquired by the insurer under 33-12-203 in the amount of the purchase price of the personal property; and

(ii) the lease or other agreement provides the insurer with the right to receive rental, purchase, or other fixed payments for the use or purchase of the property and the aggregate value of the payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, are adequate to return the cost of the insurer's investment in the property, plus a return considered adequate by the insurer.

(2) The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.

(3) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under this section would exceed:

(a) 2% of its admitted assets; or

(b) 0.5% of its admitted assets as to any single item of tangible personal property.

(4) For purposes of determining compliance with the limitations of 33-12-202, investments acquired by an insurer under this section must be aggregated with those acquired under 33-12-203 and each lessee of the property under a lease referred to in this section is considered the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided in subsection (2).

(5) Nothing in this section is applicable to tangible personal property lease arrangements between an insurer and its subsidiaries and affiliates under a

cost-sharing arrangement or agreement permitted under Title 33, chapter 2, part 11.

History: **En. Sec. 18, Ch. 304, L. 1999.**

33-12-207. Mortgage loans — income-producing real estate — real estate for the accommodation of business — quantitative limitations. (1) Subject to the limitations of 33-12-203, an insurer may acquire obligations secured by mortgages on real estate situated within a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by 33-12-104(4), joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments. However, a mortgage loan that is secured by other than a first lien may not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority may not, at the time of acquisition of the obligation, exceed:

(a) 90% of the fair market value of the real estate if the mortgage loan is secured by a purchase money mortgage or similar security received by the insurer upon disposition of the real estate;

(b) 80% of the fair market value of the real estate if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of 30 years or less, and has periodic payments made no less frequently than annually. Each periodic payment must be sufficient to ensure that at all times the outstanding principal balance of the mortgage loan is not greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection (1)(b) are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the 80% limitation may be increased to 97% if acceptable private mortgage insurance has been obtained.

(c) 75% of the fair market value of the real estate for mortgage loans that do not meet the requirements of subsection (1)(a) or (1)(b).

(2) For purposes of subsection (1)(a), the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the federal housing administration, guaranteed by the administrator of veterans affairs, or insured or guaranteed by their successors.

(3) A mortgage loan that is held by an insurer under 33-12-103(6) or that is acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or a successor publication continues to qualify as a mortgage loan under this chapter.

(4) Subject to the limitations of 33-12-202, credit lease transactions that do not qualify for investment under 33-12-203 with the following characteristics are exempt from the provisions of subsection (1)(a) of this section:

(a) the loan amortizes over the initial fixed lease term in at least an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;

(b) the lease payments cover or exceed the total debt service over the life of the loan;

(c) a tenant or its affiliated entity with rated credit instruments that have an SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;

(d) the insurer holds or is the beneficial holder of a first lien mortgage on the real estate;

(e) the expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking, and heating, ventilation, and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and

(f) there is a perfected assignment of the rents due pursuant to the lease to or for the benefit of the insurer.

(5) (a) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by 33-12-104(4), joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate must be income-producing or intended for improvement or development for investment purposes under an existing program, in which case the real estate is considered to be income-producing.

(b) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which must, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (7)(b) and (7)(c).

(6) (a) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's or the insurer's affiliates' business operations, including home office, branch office, and field office operations.

(b) Real estate acquired under this subsection (6) may include excess space for rent to others if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (5) and is so qualified by the insurer.

(c) The real estate acquired under this subsection (6) may be subject to one or more mortgages, liens, or other encumbrances, the amount of which must, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (7)(d).

(d) For purposes of this subsection (6), business operations may not include that portion of real estate used for the direct provision of health care services by an accident and health insurer for its insureds. An insurer may acquire real estate used for these purposes under subsection (5).

(7) (a) An insurer may not acquire an investment under subsection (1) if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (1) would exceed:

(i) 1% of its admitted assets in mortgage loans covering any one secured location;

(ii) 0.25% of its admitted assets in construction loans covering any one secured location; or

(iii) 2% of its admitted assets in construction loans in the aggregate.

(b) An insurer may not acquire an investment under subsection (5) if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsection (5) plus the guarantees then outstanding would exceed:

(i) 1% of its admitted assets in one parcel or group of contiguous parcels of real estate, except that this limitation does not apply to that portion of real estate used for the direct provision of health care services by an accident and health insurer for its insureds, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or

(ii) 15% of its admitted assets in the aggregate, but not more than 5% of its admitted assets as to properties that are to be improved or developed.

(c) An insurer may not acquire an investment under subsection (5) or (6) if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of all investments then held by the insurer under subsection (5) or (6) plus the guarantees then outstanding would exceed 45% of its admitted assets. However, an insurer may exceed this limitation by no more than 30% of its admitted assets if:

(i) this increased amount is invested only in residential mortgage loans;

(ii) the insurer has no more than 10% of its admitted assets invested in mortgage loans other than residential mortgage loans;

(iii) the loan-to-value ratio of each residential mortgage loan does not exceed 60% at the time the mortgage loan is qualified under this increased authority and the fair market value is supported by an appraisal no more than 2 years old prepared by an independent appraiser;

(iv) a single mortgage loan qualified under this increased authority may not exceed 0.5% of its admitted assets;

(v) the insurer files with the commissioner, and receives approval from the commissioner for, a plan that is designed to result in a portfolio of residential mortgage loans that is sufficiently geographically diversified; and

(vi) the insurer agrees to file annually with the commissioner records that demonstrate that its portfolio of residential mortgage loans is geographically diversified in accordance with the plan.

(d) The limitations of 33-12-202 do not apply to an insurer's acquisition of real estate under subsection (6). An insurer may not acquire real estate under subsection (6) if, as a result of and after giving effect to the acquisition, the aggregate amount of real estate then held by the insurer under subsection (6) would exceed 10% of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under subsection (6).

History: En. Sec. 19, Ch. 304, L. 1999.

33-12-208. Securities lending, repurchase, reverse repurchase, and dollar roll transactions. (1) An insurer may enter into securities lending, repurchase, reverse repurchase, and dollar roll transactions with business entities, subject to the following requirements:

(a) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan provided for in 33-12-104(1) and that specifies guidelines and objectives to be followed, such as:

(i) a description of how cash received will be invested or used for general corporate purposes of the insurer;

(ii) operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(iii) the extent to which the insurer may engage in these transactions.

(b) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement must require that each transaction terminates no more than 1 year from its inception or upon the earlier demand of the insurer. The agreement must be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer if the agent is a qualified business entity and if the agreement:

(i) requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(ii) prohibits securities lending transactions under the agreement with the agent or its affiliates.

(c) Cash received in a transaction under this section must be invested in accordance with this chapter and in a manner that recognizes the liquidity needs of the transaction or must be used by the insurer for its general corporate purposes. For as long as the transaction remains outstanding, the insurer or its agent or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the federal reserve, depository trust company, participants trust company, or other securities depositories approved by the commissioner:

(i) possession of the acceptable collateral;

(ii) a perfected security interest in the acceptable collateral; or

(iii) in the case of a jurisdiction outside of the United States, title to or rights of a secured creditor to the acceptable collateral.

(d) The limitations of 33-12-202 and 33-12-209 do not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection (1)(d), effect may not be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer may not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(i) the aggregate amount of securities then loaned, sold to, or purchased from any one business entity counterparty under this section would exceed 5% of the insurer's admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement.

(ii) the aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed 40% of the insurer's admitted assets.

(e) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 102% of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty is obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of the market value of the loaned securities.

(f) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 95% of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than 95% of the market value of the securities transferred, the business entity counterparty is obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 95% of the market value of the transferred securities.

(g) In a dollar roll transaction, the insurer must receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(h) In a repurchase transaction, the insurer must receive as acceptable collateral transferred securities having a market value at least equal to 102% of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than 100% of the purchase price paid by the insurer, the business entity counterparty is obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of the purchase price. Securities acquired by an insurer in a repurchase transaction may not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

(2) To constitute acceptable collateral for the purposes of this section, a letter of credit must have an expiration date beyond the term of the subject transaction.

History: En. Sec. 20, Ch. 304, L. 1999.

33-12-209. Foreign investments and foreign currency exposure. (1) Subject to the limitations of 33-12-202, an insurer may acquire foreign investments or engage in investment practices with persons of or in foreign jurisdictions if the investments or investment practices are of substantially the same types as those that an insurer is permitted to acquire under this chapter, other than of the type permitted under 33-12-204 and if, as a result of and after giving effect to the investment, the aggregate amount of foreign investments then held by the insurer under this subsection (1):

(a) does not exceed 20% of its admitted assets; and

(b) in a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 3% of its admitted assets as to any other foreign jurisdiction.

(2) (a) Subject to the limitations of 33-12-202, an insurer may acquire investments or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (1) or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if the aggregate amount of investments then held by the insurer under this subsection (2) denominated in:

(i) foreign currencies does not exceed 10% of its admitted assets; and

(ii) the foreign currency of a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 3% of its admitted assets as to any other foreign jurisdiction.

(b) However, an investment under subsection (2)(a) may not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under 33-12-210 and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate that effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) (a) In addition to investments permitted under subsections (1) and (2), an insurer that is authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction may acquire foreign investments respecting that foreign jurisdiction and may acquire investments denominated in the currency of that jurisdiction subject to the limitations of 33-12-202.

(b) However, investments made under this subsection (3) in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises are not subject to the limitations of 33-12-202 if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection (3) may not exceed the greater of:

(i) the amount the insurer is required by the law of the foreign jurisdiction to invest in the foreign jurisdiction; or

(ii) 115% of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(4) In addition to investments permitted under subsections (1) and (2), an insurer that is not authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction may acquire foreign investments respecting that foreign jurisdiction and may acquire investments denominated in the currency of that jurisdiction subject to the limitations of 33-12-202. However, investments made under this subsection in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises are not subject to the limitations of 33-12-202 if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection may not exceed 105% of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(5) Investments acquired under this section must be aggregated with investments of the same types made under this chapter and, in a similar manner, for purposes of determining compliance with the limitations, if any, contained in this chapter. Investments in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises, except for those exempted under subsections (3) and (4), are subject to the limitations of 33-12-202.

History: En. Sec. 21, Ch. 304, L. 1999.

33-12-210. Derivative transactions. An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(1) (a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income-generation transactions as provided in rules adopted by the commissioner.

(b) An insurer must be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses.

(2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(a) the aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed 5% of its admitted assets;

(b) the aggregate statement value of options, caps, and floors written in hedging transactions does not exceed 3% of its admitted assets; and

(c) the aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed 6.5% of its admitted assets.

(3) An insurer may enter into the following types of income-generation transactions only if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed-income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus

the amount of the purchase obligations under the put options does not exceed 10% of its admitted assets:

(a) sales of covered call options on noncallable, fixed-income securities, callable fixed-income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed-income securities;

(b) sales of covered call options on equity securities if the insurer holds in its portfolio or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(c) sales of covered put options on investments that the insurer is permitted to acquire under this chapter if the insurer has placed in escrow or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put option during the complete term of the put option sold; or

(d) sales of covered caps or floors if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.

(4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of 33-12-202.

(5) Pursuant to rules adopted under 33-12-111, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) or for other risk management purposes under rules adopted by the commissioner, but replication transactions may not be permitted for other than risk management purposes.

History: En. Sec. 22, Ch. 304, L. 1999.

33-12-211. Policy loans. A life insurer may lend to a policyholder, on the security of the cash surrender value of the policyholder's policy, a sum not exceeding the legal reserve that the insurer is required to maintain on the policy.

History: En. Sec. 23, Ch. 304, L. 1999.

33-12-212. Additional investment authority. (1) Under this subsection (1), an insurer may acquire an investment or may engage in investment practices described in 33-12-208 solely for the purpose of acquiring investments that exceed the quantitative limitations of 33-12-202 through 33-12-209. However, an insurer may not acquire an investment or engage in investment practices described in 33-12-208 under this subsection (1) if, as a result of and after giving effect to the transaction:

(a) the aggregate amount of investments then held by an insurer under this subsection (1) would exceed 3% of its admitted assets; or

(b) the aggregate amount of investments as to a limitation in 33-12-202 through 33-12-209 then held by the insurer under this subsection (1) would exceed 1% of its admitted assets.

(2) (a) In addition to the authority provided under subsection (1), an insurer may acquire under this subsection (2) an investment of any kind or engage in investment practices described in 33-12-208 that are not specifically prohibited by this chapter without regard to the categories, conditions, standards, or other limitations of 33-12-202 through 33-12-209 if, as a result of and after giving effect to the transaction, the aggregate amount of investments then held under this subsection (2) would not exceed the lesser of:

(i) 10% of its admitted assets; or

(ii) 75% of its capital and surplus.

(b) However, an insurer may not acquire any investment or engage in any investment practice under this subsection (2) if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one person then held by the insurer under this subsection (2) would exceed 3% of its admitted assets.

(3) In addition to the investments acquired under subsections (1) and (2), an insurer may acquire under this subsection (3) an investment of any kind or engage in investment practices described in 33-12-208 that are not specifically prohibited by this chapter without regard to any limitations of 33-12-202 through 33-12-209 if:

(a) the commissioner grants prior approval;

(b) the insurer demonstrates that its investments are being made in a prudent manner and that the additional amounts will be invested in a prudent manner; and

(c) as a result of and after giving effect to the transaction, the aggregate amount of investments then held by the insurer under this subsection (3) does not exceed the greater of:

(i) 25% of its capital and surplus; or

(ii) 100% of capital and surplus less 10% of its admitted assets.

(4) An investment prohibited under 33-12-105 that is not permitted under 33-12-210 or additional derivative instruments acquired under 33-12-210 may not be acquired under this section.

History: En. Sec. 24, Ch. 304, L. 1999.

Part 3

Property and Casualty, Financial Guaranty, Mortgage Guaranty, Surety, Marine, and Title Insurers

Part Compiler's Comments

Effective Date: Section 52, Ch. 304, L. 1999, provided that this part was effective July 1, 1999.

33-12-301. Applicability. Subject to the provisions of 33-12-101(2), this part applies to the investments and investment practices of property and casualty, financial guaranty, mortgage guaranty, surety, marine, and title insurers.

History: En. Sec. 25, Ch. 304, L. 1999.

33-12-302. General five percent diversification — medium-grade and lower-grade investments — Canadian investments. (1) (a) Except as otherwise specified in this chapter, an insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under this chapter if, as a result of and after giving effect to the investment, the insurer would hold more than 5% of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

(b) The 5% limitation in subsection (1)(a) does not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(c) Asset-backed securities are not subject to the limitations of subsection (1)(a). However, an insurer may not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities that are secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity and that are then held by the insurer would exceed 5% of its admitted assets.

(2) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under 33-12-303, 33-12-306, or 33-12-309 or counterparty exposure under 33-12-310(4) if, as a result of and after giving effect to the investment:

(i) the aggregate amount of all medium-grade and lower-grade investments then held by the insurer would exceed 20% of its admitted assets;

(ii) the aggregate amount of lower-grade investments then held by the insurer would exceed 10% of its admitted assets;

(iii) the aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed 5% of its admitted assets;

(iv) the aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed 1% of its admitted assets; or

(v) the aggregate amount of medium-grade and lower-grade investments then held by the insurer that receive as cash income less than the equivalent yield for treasury issues with a comparative average life would exceed 1% of its admitted assets.

(b) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under 33-12-303, 33-12-306, or 33-12-309 or counterparty exposure under 33-12-310(4) if, as a result of and after giving effect to the investment:

(i) the aggregate amount of medium-grade and lower-grade investments issued, assumed, accepted, insured, or guaranteed by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 1% of its admitted assets; or

(ii) the aggregate amount of lower-grade investments issued, assumed, accepted, insured, or guaranteed by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 0.5% of its admitted assets.

(c) If an insurer attains or exceeds the limit of any one rating category referred to in this subsection (2), the insurer is not precluded from acquiring investments in other rating categories subject to the specific and multicategory limits applicable to those investments.

(3) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, any Canadian investments authorized by this chapter if as a result of and after giving effect to the investment, the aggregate amount of the investments then held by the insurer would exceed 40% of its admitted assets or if the aggregate amount of Canadian investments not acquired under 33-12-303(1)(b) then held by the insurer would exceed 25% of its admitted assets.

(b) However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection (3)(a) must be increased by the greater of:

(i) the amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

(ii) 125% of the amount of its reserves and other obligations under contracts on risks resident or located in Canada.

History: En. Sec. 26, Ch. 304, L. 1999.

33-12-303. Rated credit instruments. (1) Subject to the limitations of subsection (2), an insurer may acquire rated credit instruments in accordance with the following:

(a) Subject to the limitations of 33-12-302(2), but not to the limitations of 33-12-302(1), an insurer may acquire rated credit instruments issued, assumed, insured, or guaranteed by:

(i) the United States; or

(ii) a government-sponsored enterprise of the United States, if the instruments of the government-sponsored enterprise are assumed, guaranteed, or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.

(b) (i) Subject to the limitations of 33-12-302(2), but not to the limitations of 33-12-302(1), an insurer may acquire rated credit instruments issued, assumed, insured, or guaranteed by:

(A) Canada; or

(B) a government-sponsored enterprise of Canada, if the instruments of the government-sponsored enterprise are assumed, guaranteed, or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada.

(ii) However, an insurer may not acquire an instrument under this subsection (1)(b) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection (1)(b) would exceed 40% of its admitted assets.

(c) (i) Subject to the limitations of 33-12-302(2), but not to the limitations of 33-12-302(1), an insurer may acquire rated credit instruments, excluding asset-backed securities:

(A) issued by a government money market mutual fund, a class one money market mutual fund, or a class one bond mutual fund;

(B) issued, assumed, insured, or guaranteed by a government-sponsored enterprise of the United States other than those eligible under subsection (1)(a);

(C) issued, assumed, insured, or guaranteed by a state if the instruments are general obligations of the state; or

(D) issued by a multilateral development bank.

(ii) However, an insurer may not acquire an instrument of any one fund, any one enterprise or entity, or any one state under this subsection (1)(c) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise, entity, or state under this subsection (1)(c) would exceed 10% of its admitted assets.

(d) Subject to the limitations of 33-12-302, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(i) the aggregate amount of preferred stocks then held by the insurer under this subsection (1)(d) does not exceed 20% of its admitted assets; and

(ii) the aggregate amount of preferred stocks then held by the insurer under this subsection (1)(d) that are not sinking fund stocks or rated P-1 or P-2 by the SVO does not exceed 10% of its admitted assets.

(e) Subject to the limitations of 33-12-302, in addition to those investments eligible under subsections (1)(a) through (1)(d), an insurer may acquire rated credit instruments that are not foreign investments.

(2) An insurer may not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed 5% of its admitted assets.

History: En. Sec. 27, Ch. 304, L. 1999.

33-12-304. Insurer investment pools. (1) An insurer may acquire investments in investment pools that:

(a) invest only in:

(i) obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating by a nationally recognized statistical rating organization recognized by the SVO or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating and have:

(A) a remaining maturity of 397 days or less or a put option that entitles the holder to receive the principal amount of the obligation that may be exercised through maturity at specified intervals not exceeding 397 days; or

(B) a remaining maturity of 3 years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London interbank offered rate, or commercial paper) and is subject to no maximum limit if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(ii) government money market mutual funds or class one money market mutual funds; or

(iii) securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of 33-12-308, except the quantitative limitations of 33-12-308(1)(d); or

(b) invest only in investments that an insurer may acquire under this chapter if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this chapter.

(2) For an investment in an investment pool to be qualified under this chapter, the investment pool may not:

(a) acquire securities issued, assumed, insured, or guaranteed by the insurer or an affiliate of the insurer;

(b) borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of 33-12-308, except the quantitative limitations of 33-12-308(1)(d); or

(c) permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one business entity under this section to exceed 10% of the total assets of the investment pool.

(3) The limitations of 33-12-302(1) do not apply to an insurer's investment in an investment pool. However, an insurer may not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(a) in any one investment pool would exceed 10% of its admitted assets;

(b) in all investment pools investing in investments permitted under subsection (1)(b) would exceed 25% of its admitted assets; or

(c) in all investment pools would exceed 40% of its admitted assets.

(4) For an investment in an investment pool to be qualified under this chapter, the manager of the investment pool:

(a) must be organized under the laws of the United States or a state and must be designated as the pool manager in a pooling agreement;

(b) must be:

(i) the insurer, an affiliated insurer, a business entity affiliated with the insurer, a qualified bank, or a business entity registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.), as amended;

(ii) in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact; or

(iii) in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(c) shall compile and maintain detailed accounting records setting forth:

(i) the cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

(ii) a complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date, if any, and other appropriate designations; and

(iii) other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and

(d) shall maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement must:

(i) state and recognize the claims and rights of each participant;

(ii) acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

(iii) contain an agreement that the underlying assets of the investment pool may not be commingled with the general assets of the custodian qualified bank or any other person.

(5) The pooling agreement for each investment pool must be in writing and must provide that:

(a) an insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subsection (1)(a), the insurer and its subsidiaries or affiliates, any pension or profit-sharing plan of the insurer or its subsidiaries and affiliates, or in the case of a United States branch of an alien insurer, the affiliates or subsidiaries of its United States manager shall, at all times, hold 100% of the interests in the investment pool;

(b) the underlying assets of the investment pool may not be commingled with the general assets of the pool manager or any other person;

(c) in proportion to the aggregate amount of each pool participant's interest in the investment pool:

(i) each participant owns an undivided interest in the underlying assets of the investment pool; and

(ii) the underlying assets of the investment pool are held solely for the benefit of each participant;

(d) a participant or, in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor in interest may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(e) withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds must occur within a reasonable and customary period after withdrawal not to exceed 5 business days. Distributions under this subsection (5)(e) must be calculated in each case net of all then-applicable fees and expenses of the investment pool. The pooling agreement must provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

(i) in cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

(ii) in kind, a pro rata share of each underlying asset; or

(iii) in a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and

(f) the pool manager shall make the records of the investment pool available for inspection by the commissioner.

History: En. Sec. 28, Ch. 304, L. 1999.

33-12-305. Equity interests. (1) Subject to the limitations of 33-12-302, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.

(2) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments

then held by the insurer under this section would exceed the greater of 25% of its admitted assets or 100% of its surplus as regards policyholders.

(3) An insurer may not acquire under this section any investments that the insurer may acquire under 33-12-307.

(4) An insurer may not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within 6 months of the short sale.

History: En. Sec. 29, Ch. 304, L. 1999.

33-12-306. Tangible personal property under lease. (1) (a) Subject to the limitations of 33-12-302, an insurer may acquire tangible personal property or equity interests in tangible personal property located or used wholly or in part within a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by 33-12-104(4), joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments.

(b) Investments acquired under subsection (1)(a) are eligible only if:

(i) the property is subject to a lease or other agreement with a person whose rated credit instruments in the amount of the purchase price of the personal property the insurer could then acquire under 33-12-303; and

(ii) the lease or other agreement provides the insurer the right to receive rental, purchase, or other fixed payments for the use or purchase of the property and the aggregate value of the payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, are adequate to return the cost of the insurer's investment in the property, plus a return considered adequate by the insurer.

(2) The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.

(3) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under this section would exceed:

(a) 2% of its admitted assets; or

(b) 0.5% of its admitted assets as to any single item of tangible personal property.

(4) For purposes of determining compliance with the limitations of 33-12-302, investments acquired by an insurer under this section must be aggregated with those acquired under 33-12-303 and each lessee of the property under a lease referred to in this section is considered the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided in subsection (2).

(5) This section is not applicable to tangible personal property lease arrangements between an insurer and its subsidiaries and affiliates under a cost-sharing arrangement or agreement permitted under Title 33, chapter 2, part 11.

History: En. Sec. 30, Ch. 304, L. 1999.

33-12-307. Mortgage loans — income producing real estate — real estate for accommodation of business — quantitative limitations. (1) (a) Subject to the limitations of 33-12-302, an insurer may acquire obligations secured by mortgages on real estate situated within a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by 33-12-104(4), joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments. However, a mortgage loan that is secured by other than a first lien may not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority may not, at the time of acquisition of the obligation, exceed:

(i) 90% of the fair market value of the real estate if the mortgage loan is secured by a purchase money mortgage or similar security received by the insurer upon disposition of the real estate;

(ii) 80% of the fair market value of the real estate if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of 30 years or less, and has periodic payments made no less frequently than annually. Each periodic payment must be sufficient to ensure that at all times the outstanding principal balance of the mortgage loan is not greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection (1)(b) are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the 80% limitation may be increased to 97% if acceptable private mortgage insurance has been obtained.

(iii) 75% of the fair market value of the real estate for mortgage loans that do not meet the requirements of subsections (1)(a)(i) or (1)(a)(ii).

(b) For purposes of subsection (1)(a), the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the federal housing administration, guaranteed by the administrator of veterans affairs, or insured or guaranteed by their successors.

(c) A mortgage loan that is held by an insurer under 33-12-103(6) or acquired under this section and that is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or a successor publication continues to qualify as a mortgage loan under this chapter.

(d) Subject to the limitations of 33-12-302, credit lease transactions that do not qualify for investment under 33-12-303 and that have the following characteristics are exempt from the provisions of subsection (1)(a):

(i) the loan amortizes over the initial fixed lease term in at least an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;

(ii) the lease payments cover or exceed the total debt service over the life of the loan;

(iii) a tenant or its affiliated entity with rated credit instruments that have an SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;

(iv) the insurer holds or is the beneficial holder of a first lien mortgage on the real estate;

(v) the expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking, and heating, ventilation, and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and

(vi) there is a perfected assignment of the rents due pursuant to the lease to or for the benefit of the insurer.

(2) (a) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by 33-12-104(4), joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate must be income-producing or intended for improvement or development for investment purposes under an existing program, in which case the real estate must be considered to be income-producing.

(b) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which must, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (4)(b) and (4)(c).

(3) (a) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's or the insurer's affiliates' business operations, including home office, branch office, and field office operations.

(b) Real estate acquired under this subsection (3) may include excess space for rent to others if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (2) and is so qualified by the insurer.

(c) The real estate acquired under this subsection (3) may be subject to one or more mortgages, liens, or other encumbrances, the amount of which must, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (4)(d).

(d) For purposes of this subsection (3), business operations may not include that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutory required reserves, respectively. An insurer may acquire real estate used for these purposes under subsection (2).

(4) (a) An insurer may not acquire an investment under subsection (1) if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (1) would exceed:

(i) 1% of its admitted assets in mortgage loans covering any one secured location;

(ii) 0.25% of its admitted assets in construction loans covering any one secured location; or

(iii) 1% of its admitted assets in construction loans in the aggregate.

(b) An insurer may not acquire an investment under subsection (2) if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsection (2) plus the guarantees then outstanding would exceed:

(i) 1% of its admitted assets in any one parcel or group of contiguous parcels of real estate, except that this limitation does not apply to that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutory required reserves, respectively, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or

(ii) the lesser of 10% of its admitted assets or 40% of its surplus as regards policyholders in the aggregate, except for an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutory required reserves, respectively. This limitation must be increased to 15% of its admitted assets in the aggregate.

(c) An insurer may not acquire an investment under subsection (1) or (2) if, as a result of and after giving effect to the investment and any outstanding guarantees it has made in connection with the investment, the aggregate amount of all investments then held by the insurer under subsection (1) or (2) plus the guarantees then outstanding would exceed 25% of its admitted assets.

(d) The limitations of 33-12-302 do not apply to an insurer's acquisition of real estate under subsection (3). An insurer may not acquire real estate under subsection (3) if, as a result of and after giving effect to the acquisition, the aggregate amount of all real estate then held by the insurer under subsection (3) would exceed 10% of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under subsection (3).

History: En. Sec. 31, Ch. 304, L. 1999.

33-12-308. Securities lending, repurchase, reverse repurchase, and dollar roll transactions. (1) An insurer may enter into securities lending, repurchase, reverse repurchase, and dollar roll transactions with business entities, subject to the following requirements:

(a) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan provided for in 33-12-104(1) that specifies guidelines and objectives to be followed, such as:

(i) a description of how cash received will be invested or used for general corporate purposes of the insurer;

(ii) operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(iii) the extent to which the insurer may engage in these transactions.

(b) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement must require that each transaction terminate no more than 1 year from its inception or upon the earlier demand of the insurer. The agreement must be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer if the agent is a qualified business entity and if the agreement:

(i) requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(ii) prohibits securities lending transactions under the agreement with the agent or its affiliates.

(c) Cash received in a transaction under this section must be invested in accordance with this chapter and in a manner that recognizes the liquidity needs of the transaction or must be used by the insurer for its general corporate purposes. For as long as the transaction remains outstanding, the insurer or its agent or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the federal reserve, depository trust company, participants trust company, or other securities depositories approved by the commissioner:

(i) possession of the acceptable collateral;

(ii) a perfected security interest in the acceptable collateral; or

(iii) in the case of a jurisdiction outside of the United States, title to or rights of a secured creditor to the acceptable collateral.

(d) The limitations of 33-12-302 and 33-12-309 do not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection (1), no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer may not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(i) the aggregate amount of securities then loaned, sold to, or purchased from any one business entity counterparty under this section would exceed 5% of the insurer's admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement.

(ii) the aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed 40% of its admitted assets. However, the limitation of this subsection (1)(d) does not apply to reverse repurchase transactions as long as the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and is subject to a plan approved by the commissioner.

(e) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 102% of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty must be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of the market value of the loaned securities.

(f) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 95% of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than 95% of the market value of the securities transferred, the business entity counterparty is obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 95% of the market value of the transferred securities.

(g) In a dollar roll transaction, the insurer must receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(h) In a repurchase transaction, the insurer must receive as acceptable collateral transferred securities having a market value at least equal to 102% of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than 100% of the purchase price paid by the insurer, the business entity counterparty must be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of the purchase price. Securities acquired by an insurer in a repurchase transaction may not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

(2) To constitute acceptable collateral for the purposes of this section, a letter of credit must have an expiration date beyond the term of the subject transaction.

History: **En. Sec. 32, Ch. 304, L. 1999.**

33-12-309. Foreign investments and foreign currency exposure. (1) Subject to the limitations of 33-12-302, an insurer may acquire foreign investments or engage in investment practices with persons of or in foreign jurisdictions if the investments or investment practices are of substantially the same types as those that an insurer is permitted to acquire under this chapter, other than of the type permitted under 33-12-304 and if as a result of and after giving effect to the investment the aggregate amount of foreign investments then held by the insurer under this subsection (1):

(a) does not exceed 20% of its admitted assets; and

(b) in a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 5% of its admitted assets as to any other foreign jurisdiction.

(2) (a) Subject to the limitations of 33-12-302, an insurer may acquire investments or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (1), or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency if:

(i) the aggregate amount of investments then held by the insurer under this subsection (2) denominated in foreign currencies does not exceed 15% of its admitted assets; and

(ii) the aggregate amount of investments then held by the insurer under this subsection (2) denominated in the foreign currency of a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 5% of its admitted assets as to any other foreign jurisdiction.

(b) However, an investment may not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under 33-12-310 and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate that effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) (a) Subject to 33-12-302 and subsection (3)(b) of this section and in addition to investments permitted under subsections (1) and (2), an insurer that is authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction may acquire foreign investments respecting that foreign jurisdiction and may acquire investments denominated in the currency of that jurisdiction.

(b) However, investments made under this subsection (3) in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises are not subject to the limitations of 33-12-302 if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection (3) may not exceed the greater of:

(i) the amount the insurer is required by law to invest in the foreign jurisdiction; or

(ii) 125% of the amount of its reserves, net of reinsurance, and other obligations under the contracts.

(4) (a) In addition to investments permitted under subsections (1) and (2) and except as provided in subsection (4)(b), an insurer that is not authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign jurisdiction and denominated in foreign currency of that jurisdiction may acquire foreign investments respecting that foreign jurisdiction and may acquire investments denominated in the currency of that jurisdiction subject to the limitations set forth in 33-12-302.

(b) However, investments made under this subsection (4) in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises are not subject to the limitations of 33-12-302 if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection (4) may not exceed 105% of the amount of its reserves, net of reinsurance, and other obligations under the contracts on risks resident or located in the foreign jurisdiction.

(5) Investments acquired under this section must be aggregated with investments of the same types made under this chapter and, in a similar manner, for purposes of determining compliance with the limitations, if any, contained in this chapter. Investments in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises, except for those exempted under subsections (3) and (4), are subject to the limitations of 33-12-302.

History: En. Sec. 33, Ch. 304, L. 1999.

33-12-310. Derivative transactions. An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(1) (a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions as provided in rules adopted by the commissioner.

(b) An insurer must be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analyses.

(2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(a) the aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed 5% of its admitted assets;

(b) the aggregate statement value of options, caps, and floors written in hedging transactions does not exceed 3% of its admitted assets; and

(c) the aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed 6.5% of its admitted assets.

(3) An insurer may enter into the following types of income-generation transactions only if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed-income assets that are subject to call, plus the face value of fixed-income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the put options does not exceed 10% of its admitted assets:

(a) sales of covered call options on noncallable, fixed-income securities, callable fixed-income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed-income securities;

(b) sales of covered call options on equity securities if the insurer holds in its portfolio or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold; or

(c) sales of covered put options on investments that the insurer is permitted to acquire under this chapter if the insurer has placed in escrow or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put option during the complete term of the put option sold.

(4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of 33-12-302.

(5) Pursuant to rules adopted under 33-12-111, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) or for other risk management purposes under rules adopted by the commissioner, but replication transactions may not be permitted for other than risk management purposes.

History: En. Sec. 34, Ch. 304, L. 1999.

33-12-311. Additional investment authority. (1) Under this section, an insurer may acquire investments, may engage in investment practices of any kind that are not specifically prohibited by this chapter, or may engage in investment practices without regard to any limitation in 33-12-302 through 33-12-309. However, an insurer may not acquire an investment or engage in an investment practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments then held by the insurer under this section would exceed the greater of:

(a) its unrestricted surplus; or

(b) the lesser of:

(i) 10% of its admitted assets; or

(ii) 50% of its surplus as regards policyholders.

(2) An insurer may not acquire an investment or engage in an investment practice under subsection (1) if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one person then held by the insurer under subsection (1) would exceed 5% of its admitted assets.

History: En. Sec. 35, Ch. 304, L. 1999.

33-12-312. Reserve requirements — authority of commissioner. (1) Subject to all other limitations and requirements of this title, a property and casualty, financial guaranty, mortgage guaranty, surety, marine, title, or accident and health insurer shall maintain an amount at least equal to 100% of adjusted loss reserves and loss adjustment expense reserves, 100% of adjusted unearned premium reserves, and 100% of statutorily required policy and contract reserves in:

(a) cash and cash equivalents;

(b) high-grade investments and medium-grade investments that qualify under 33-12-303 or 33-12-304;

(c) equity interests that qualify under 33-12-305 and that are traded on a qualified exchange;

(d) investments of the type set forth in 33-12-309 if the investments are rated in the highest generic rating category by a nationally recognized statistical rating organization recognized by the SVO for rating foreign jurisdictions and if any foreign currency exposure is effectively hedged through the maturity date of the investments;

(e) qualifying investments of the type set forth in subsection (1)(b), (1)(c), or (1)(d) that are acquired under 33-12-311;

(f) interest and dividends receivable on qualifying investments of the type set forth in subsections (1)(a) through (1)(e); or

(g) reinsurance recoverable on paid losses.

(2) (a) For purposes of determining the amount of assets to be maintained under this subsection (2), the calculation of adjusted loss reserves and loss adjustment expense reserves, adjusted unearned premium reserves, and statutorily required policy and contract reserves must be based on the amounts reported as of the most recent annual or quarterly statement date.

(b) Adjusted loss reserves and loss adjustment expense reserves must be equal to the sum of the amounts derived from the following calculations:

(i) the result of each amount reported by the insurer as losses and loss adjustment expenses unpaid for each accident year for each individual line of business; multiplied by

(ii) the discount factor that is applicable to the line of business and accident year published by the internal revenue service under Internal Revenue Code section 846 (26 U.S.C. 846), as amended, for the calendar year that corresponds to the most recent annual statement of the insurer; minus

(iii) accrued retrospective premiums discounted by an average discount factor. The discount factor must be calculated by dividing the losses and loss adjustment expenses unpaid after discounting (the product of subsections (2)(b)(i) and (2)(b)(ii)) by loss and loss adjustment expense reserves before discounting subsection (2)(b)(i).

(c) For purposes of the calculations in subsections (2)(b)(i) through (2)(b)(iii), the losses and loss adjustment expenses unpaid must be determined net of anticipated salvage and subrogation and gross of any discount for the time value of money or tabular discount.

(d) Adjusted unearned premium reserves must be equal to the result of the following calculation:

(i) the amount reported by the insurer as unearned premium reserves; minus

(ii) the admitted asset amounts reported by the insurer as:

(A) premiums in and agents' balances in the course of collection, accident and health premiums due and unpaid, and uncollected premiums for accident and health premiums;

(B) premiums, agents' balances, and installments booked but deferred and not yet due; and

(C) bills receivable, taken for premium.

(3) A property and casualty, financial guaranty, mortgage guaranty, surety, marine, title, or accident and health insurer shall supplement its annual statement with a reconciliation and summary of its assets and reserve requirements as required in (1). A reconciliation and summary showing that an insurer's assets as required in subsection (1) are greater than or equal to its undiscounted reserves referred to in subsection (1) must be sufficient to satisfy this requirement. Upon prior notification, the commissioner may require an insurer to submit a reconciliation and summary with any quarterly statement filed during the calendar year.

(4) If a property and casualty, financial guaranty, mortgage guaranty, surety, marine, title, or accident and health insurer's assets and reserves do not comply with subsection (1), the insurer shall notify the commissioner immediately of the amount by which the reserve requirements exceed the annual statement value of the qualifying assets, explain why the deficiency exists, and within 30 days of the date of the notice, propose a plan of action to remedy the deficiency.

(5) (a) If the commissioner determines that an insurer is not in compliance with subsection (1), the commissioner shall require the insurer to eliminate the condition causing the noncompliance within a specified time from the date the notice of the commissioner's requirement is mailed or delivered to the insurer.

(b) If an insurer fails to comply with the commissioner's requirement under subsection (5)(a), the insurer is considered to be in hazardous financial condition and the commissioner shall take one or more of the actions authorized by law with respect to insurers in hazardous financial condition.

History: En. Sec. 36, Ch. 304, L. 1999.

CHAPTER 13

RESERVED

CHAPTER 14

INSURANCE PREMIUM FINANCE COMPANIES

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Part 1

General Provisions

33-14-101. Short title. This chapter may be cited as the "Insurance Premium Finance Company Act".

History: En. Sec. 1, Ch. 360, L. 1981.

33-14-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Insurance premium finance company" means a person engaged in the business of entering into premium finance agreements with insureds or of acquiring such premium finance agreements from insurance producers, brokers, or other premium finance companies.

(2) "Licensee" means a premium finance company holding a license issued by the commissioner under this chapter.

(3) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance producer or broker in payment of premiums on an insurance contract, together with a finance charge as authorized by this chapter, and as security therefor the

insurance premium finance company receives an assignment of the unearned premium.

(4) "Unearned premium" means that part of the original premium, including a deposit, not yet earned by the insurer and therefore due the insured if a policy is canceled.

History: En. Sec. 2, Ch. 360, L. 1981; amd. Sec. 1, Ch. 123, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

Part 2
Licensing

33-14-201. License required — fee — renewal of license. (1) Except as provided in subsection (4), a person may not engage in the business of financing insurance premiums without first having obtained a license as a premium finance company from the commissioner. Any person who engages in the business of financing insurance premiums in the state without obtaining a license as provided under this chapter is, upon conviction, guilty of a misdemeanor.

(2) The annual license fee is $100. A license may be renewed as of January 1 each year, upon payment of the fee of $100. The license fee must be paid to the commissioner.

(3) The person to whom the license or the renewal of the license is issued shall file sworn answers, subject to the penalties of perjury, to any interrogatories as the commissioner may require. The commissioner may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and the commissioner may, in the commissioner's discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if not satisfied that any officer, employee, stockholder, or partner who may materially influence the applicant's conduct meets the standards of this chapter.

(4) This section does not apply to and a license is not required of:

(a) savings and loan associations, banks, trust companies, licensed finance companies, credit unions, and resident insurance producers; or

(b) a person who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement to a licensee or to any of the organizations exempt under this subsection (4).

History: En. Sec. 3, Ch. 360, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 16, Ch. 451, L. 1993.

Cross-References

Banks and trust companies, Title 32, ch. 1.

Building and loan associations, Title 32, ch. 2.

Credit unions, Title 32, ch. 3.

Insurance producers, adjusters, consultants, and administrators, Title 33, ch. 17.

33-14-202. Investigation of applicant — qualifications — hearing. (1) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a premium finance company license if the applicant is qualified in accordance with this chapter. If the commissioner does not so find, he shall within 30 days after he has received the application, at the request of the applicant, give the applicant a full hearing.

(2) The commissioner shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed:

(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(b) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied; and

(c) if a corporation, is a corporation incorporated under the laws of the state or a foreign corporation authorized to transact business in the state.

History: En. Sec. 4, Ch. 360, L. 1981.

33-14-203. License revocation — suspension. The commissioner may revoke or suspend the license of a premium finance company when and if after investigation it appears to the commissioner that:

(1) a license issued to the company was obtained by fraud;

(2) there was misrepresentation in the application for the license;

(3) the holder of the license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company; or

(4) the company has violated any provisions of this chapter.

History: En. Sec. 5, Ch. 360, L. 1981.

33-14-204. Records required of licensees — form — inspection. (1) Every premium finance company shall maintain records of its premium finance transactions, and the records shall be open to examination and investigation by the commissioner. The commissioner may at any time require the company to bring such records as he may direct to the commissioner's office for examination.

(2) Every premium finance company shall preserve its records of premium finance transactions for at least 3 years after making the final entry in respect to any premium finance agreement. The records may be preserved in photographic form.

History: En. Sec. 6, Ch. 360, L. 1981.

Part 3

Operation and Regulation

33-14-301. Premium finance agreements — contents — form — delivery. (1) A premium finance agreement shall:

(a) be dated, signed by the insured or by any person authorized in writing to act in behalf of the insured, and the printed portion thereof shall be in at least 8-point type;

(b) contain the name and place of business of the insurance producer negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by him, the name and place of business of the premium finance company to which payments are to be made, and a description of the insurance policies involved and the amount of the premium therefor; and

(c) set forth when applicable:

(i) the total amount of the premiums;

(ii) the amount of the downpayment;

(iii) the principal balance (the difference between the items enumerated in subsections (1)(c)(i) and (1)(c)(ii));

(iv) the amount of the finance charge;

(v) the balance payable by the insured (the sum of the items enumerated in subsections (1)(c)(iii) and (1)(c)(iv)); and

(vi) the number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(2) The items set out in subsection (1)(c) need not be stated in the sequence or order in which they appear in that subsection, and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) may only be required in the initial agreement if the premium finance company and the insured enter into an open-end credit transaction, which is defined as a plan prescribing the terms of

credit transactions that may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(4) The premium finance company or the insurance producer shall deliver to the insured or mail to him at his address shown in the agreement a complete copy of the agreement.

History: En. Sec. 7, Ch. 360, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-14-302. Charges for premium financing regulated — method of computation. (1) A premium finance company may not charge, contract for, receive, or collect a finance charge other than as permitted by this chapter.

(2) The finance charge must be computed on the balance of the premiums due (after subtracting the downpayment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage for which the premiums are being advanced to and including the date when the final payment of the premium finance agreement is payable.

(3) Notwithstanding any other provision of law, the finance charge may not exceed interest at the annual rate of 21%, plus a service charge of $12.50 per premium finance agreement. The service charge of $12.50 need not be refunded upon cancellation or prepayment.

(4) An insured may prepay his premium finance agreement in full at any time prior to the due date of the final payment and in such event the unearned finance charge shall be refunded.

History: En. Sec. 8, Ch. 360, L. 1981.

33-14-303. Delinquency charges regulated. (1) A premium finance agreement may provide for the payment by the insured of a delinquency charge of $1 to a maximum of 5% of the delinquent installment but not to exceed $5 on any installment that is in default for 5 days or more.

(2) If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for payment by the insured of a cancellation charge equal to the difference between any delinquency charge or default charge imposed with respect to the installment in default and $5. A premium finance agreement may also provide for the payment of attorney's fees and court costs if the agreement is referred for collection to an attorney not a salaried employee of the insurance premium finance company.

History: En. Sec. 9, Ch. 360, L. 1981.

33-14-304. Cancellation of insurance upon default. (1) When a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract listed in the agreement, the insurance contract or contracts may not be canceled by the premium finance company unless the cancellation is effectuated in accordance with this section.

(2) Written notice must be mailed to the insured setting forth the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured prior to the date stated in the notice. The written notice must be mailed at least 10 days prior to the date stated in the notice. The insurance producer indicated on the premium finance agreement must also be mailed 10 days' notice of this action.

(3) Pursuant to the power of attorney or other authority referred to above, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when the cancellation will become effective, and the insurance contract must be canceled as if the notice of cancellation had been submitted by the insured but without requiring the return of the insurance contract. If the insurer or its insurance producer does not provide the insurance

premium finance company with a specific mailing address for the purpose of receipt of the notice, mailing by the insurance premium finance company to the insurer at the address that is on file with the commissioner is considered sufficient notice under this section. The insurance premium finance company shall also mail a notice of cancellation to the insured at the insured's last-known address and to the insurance producer indicated on the premium finance agreement.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party apply whenever cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.

History: En. Sec. 10, Ch. 360, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 44, Ch. 379, L. 1995.

33-14-305. Return of unearned premiums. (1) Whenever a financed insurance contract is canceled by a person other than the insured, the insurer shall process cancellation of the financed insurance policy on a pro rata basis. The insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) If the crediting of the return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured, except that a refund is not required if the excess amounts to less than $1.

History: En. Sec. 11, Ch. 360, L. 1981; amd. Sec. 2, Ch. 123, L. 1987; amd. Sec. 17, Ch. 451, L. 1993.

33-14-306. Agreement effective as security interest. No filing of the premium finance agreement or recording of a premium finance transaction shall be necessary to perfect the validity of the agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns.

History: En. Sec. 12, Ch. 360, L. 1981.

Cross-References

U.C.C. — secured transactions, Title 30, ch. 9.

33-14-307. Exceptions. This chapter does not apply to any insurance company or insurance companies affiliated under the same management and control authorized to do business in this state which provide installment premium payments programs at no interest to policyholders or to an insurance producer licensed to do business in this state on policies written by the insurance producer or issued by the company or companies.

History: En. Sec. 13, Ch. 360, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

CHAPTER 15

THE INSURANCE CONTRACT

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Chapter Cross-References

Evidence — admissibility of agreements, Rule 26(b), M.R.Civ.P. (see Title 25, ch. 20).

Arbitration laws — nonapplicability, 27-5-114.

Contracts, Title 28, ch. 2.

Interpretation of contracts, Title 28, ch. 3.

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

Unfair trade practices, Title 33, ch. 18.

Part 1

Scope and Definitions

33-15-101. Scope. Parts 1 through 5 do not apply as to:

(1) reinsurance;

(2) policies or contracts not issued for delivery in this state or delivered in this state;

(3) ocean marine and foreign trade insurances;

(4) title insurance, except as to the following provisions: 33-15-102, 33-15-103, 33-15-303, 33-15-305, 33-15-306, 33-15-307, 33-15-316, and 33-15-411.

History: En. Sec. 258, Ch. 286, L. 1959; R.C.M. 1947, 40-3701; amd. Sec. 17, Ch. 303, L. 1981.

Cross-References

Ocean marine insurance — definition, 33-1-209.

Title insurance — definition, 33-1-212.

Reinsurance — general provisions, Title 33, ch. 2, part 12.

33-15-102. Definitions. (1) "Policy" means the written contract of or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders, endorsements, and papers attached thereto and a part thereof.

(2) "Premium" is the consideration for insurance, by whatever name called. Any assessment or membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

History: En. Secs. 259, 260, Ch. 286, L. 1959; R.C.M. 1947, 40-3702, 40-3703.

Cross-References

Premium — exception of placement fee — state compensation insurance fund, 33-18-212.

33-15-103. Power to contract — purchase of insurance by minors. (1) Any person of competent legal capacity may contract for insurance.

(2) Any minor of the age of 15 years or more, as determined by the nearest birthday, may, notwithstanding his minority, contract for annuities and for insurance upon his own life, body, health, property, liabilities, or other interests or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under any contract for annuity or for insurance upon his own life, body, or health or any contract such minor effected upon his own property, liabilities, or other interests or on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefit accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract or to rescind, avoid, or repudiate any exercise of a right or privilege thereunder, except that such a minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise any premium on any such annuity or insurance contract.

(3) If any minor mentioned in subsection (2) above is possessed of an estate that is being administered by a guardian, no such contract shall be binding upon the estate as to payment of premiums except as and when consented to by the guardian and approved by the district court of the county in which the administration of the estate is pending, and such consent and approval shall be required as to each annual premium payment.

(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2) above shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of the minor under 33-15-201.

History: En. Sec. 267, Ch. 286, L. 1959; R.C.M. 1947, 40-3710; amd. Sec. 147, Ch. 575, L. 1981.

Cross-References

Legal capacity to contract, Title 28, ch. 2, part 2.

Minors — acquittance and discharge, 33-15-502.

Avoidance of contracts by minors, 41-1-304.

Part 2

Insurable Interests

33-15-201. Restrictions on contracting for personal insurance — insurable interests — violation. (1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his personal representative may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

(a) in the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by or would be enhanced in value by the death, disablement, or injury of the individual insured.

(4) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm or of shares of stock of a closed corporation or of an interest in such shares has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

(5) A charitable institution has an insurable interest in an individual if:

(a) the individual authorizes the charitable institution to purchase insurance naming the charitable institution as an irrevocable beneficiary; and

(b) the insurance is purchased with contributions made by the individual.

History: En. Sec. 261, Ch. 286, L. 1959; R.C.M. 1947, 40-3704; amd. Sec. 148, Ch. 575, L. 1981; amd. Sec. 3, Ch. 670, L. 1991.

Cross-References

Personal income tax deductions for person insured by charitable institution when individual purchases the insurance, 15-30-121.

Legal capacity to contract, Title 28, ch. 2, part 2.

Secured transactions — exclusion, 30-9-104.

Homicide — effect on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations, 72-2-813.

Personal representatives — actions by, 72-3-613.

Gift policies to minors, 72-26-603.

33-15-202 through 33-15-204 reserved.

33-15-205. Restrictions on property insurance — interest. (1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.

(2) "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

(3) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof.

History: En. Sec. 262, Ch. 286, L. 1959; R.C.M. 1947, 40-3705.

33-15-206. Interest of named insured — change of interest on death — transfer. (1) When the name of the person insured is specified in a policy insuring property, the insurance can be applied only to his own proper interest.

(2) A change of interest, by will or succession, on the death of the insured does not avoid an insurance of property, and the insurance passes to the person taking his interest in the thing insured.

(3) A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others does not avoid an insurance of property even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

History: En. Secs. 263, 264, 265, Ch. 286, L. 1959; R.C.M. 1947, 40-3706, 40-3707, 40-3708.

33-15-207. Insurance without interest or of wager — void. (1) Every stipulation in a policy of insurance of property for the payment of loss without regard to absence of an insurable interest in such property on the part of the insured or that the policy shall be received as proof of such interest is void.

(2) Every policy executed by way of gaming or wagering is void.

History: En. Sec. 266, Ch. 286, L. 1959; R.C.M. 1947, 40-3709.

Part 3

Policy Provisions

Part Cross-References

Unfair trade practices, Title 33, ch. 18.

Crop hail insurance, Title 80, ch. 2, part 2.

33-15-301. Requiring standard provisions — waiver. (1) Insurance contracts must contain the standard or uniform provisions and benefits required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive a particular provision in a particular insurance policy form if:

(a) the commissioner finds the provision or benefit unnecessary for the protection of the insured and inconsistent with the purposes of the policy; and

(b) the policy is otherwise approved by the commissioner.

(2) A policy or certificate may not contain any provision or benefit inconsistent with or contradictory to any standard or uniform provision or benefit used or required to be used, but the commissioner may approve any substitute provision or benefit that is, in the commissioner's opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

(3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the commissioner.

(4) A provision, if required to be contained in the policy, may not be waived by agreement between the insurer and any other person.

History: En. Sec. 273, Ch. 286, L. 1959; R.C.M. 1947, 40-3716; amd. Sec. 45, Ch. 379, L. 1995.

Cross-References

Approval of forms, Title 33, ch. 1, part 5.

Hearings by Commissioner, 33-1-701.

33-15-302. Policy must contain entire contract. The policy, when issued, shall contain the entire contract between the parties, and neither the insurer or any insurance producer or representative thereof nor any person insured thereunder shall make any agreement as to the insurance which is not plainly expressed in the policy. This provision shall not be deemed to prohibit the modification of a policy, after issuance, by written rider or endorsement duly issued by the insurer.

History: En. Sec. 274, Ch. 286, L. 1959; R.C.M. 1947, 40-3717; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

When several contracts taken together, 28-3-203.

33-15-303. Contents of policies in general — identification. (1) Each policy must specify:

(a) the names of the parties to the contract;

(b) the subject of the insurance;

(c) the risks insured against;

(d) the time when the insurance under the policy takes effect and the period during which the insurance is to continue;

(e) the premium;

(f) the conditions pertaining to the insurance.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid must be included.

(3) All policies and annuity contracts issued by insurers and the forms of policies and annuity contracts filed with the commissioner must have printed on the policy or annuity contract an appropriate designating letter or figure, combination of letters or figures, or terms identifying the respective forms of policies or contracts. Each form, including riders and endorsements, must be identified by a designating letter or figure placed in a lower, preferably left-hand, corner of the first page of the form. Whenever any change is made in any form, the designating letters, figures, or terms on the form must be correspondingly changed and the revision date must be noted next to the designating letters.

History: En. Sec. 275, Ch. 286, L. 1959; R.C.M. 1947, 40-3718; amd. Sec. 18, Ch. 303, L. 1981; amd. Sec. 18, Ch. 451, L. 1993; amd. Sec. 46, Ch. 379, L. 1995.

Cross-References

Group insurance, Title 33, ch. 20, parts 10 through 12; Title 33, ch. 22, part 5.

Surety insurance, Title 33, ch. 26.

33-15-304. Permissible content. A policy may contain additional provisions not inconsistent with this code and which are:

(1) required to be inserted by the laws of the insurer's domicile;

(2) necessary, on account of the manner in which the insurer is constituted or operated, in order to state the rights and obligations of the parties to the contract; or

(3) desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included therein.

History: En. Sec. 276, Ch. 286, L. 1959; R.C.M. 1947, 40-3719.

33-15-305. Prohibited content — charter or bylaws. No policy shall contain any provision purporting to make any portion of the charter, bylaws, or other constituent document of the insurer, other than the subscribers' agreement or power of attorney of a reciprocal insurer, a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid.

History: En. Sec. 277, Ch. 286, L. 1959; R.C.M. 1947, 40-3720.

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

Power of attorney — reciprocal insurer, 33-5-301.

33-15-306. Execution of policies — facsimile signature. (1) Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney-in-fact, employee, or representative duly authorized by the insurer.

(2) A facsimile signature of any such executing individual may be used in lieu of an original signature.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of an individual not authorized so to execute as of the date of the policy.

History: En. Sec. 278, Ch. 286, L. 1959; R.C.M. 1947, 40-3721.

33-15-307. Underwriters' and combination policies. (1) Two or more authorized insurers may jointly issue and shall be jointly and severally liable on an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department, and such policy shall plainly show the true name of the insurer.

(2) Two or more insurers may, with the approval of the commissioner, issue a combination policy which shall contain provisions substantially as follows:

(a) that the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy; and

(b) that service of process or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(3) This section shall not apply to cosurety obligations.

History: En. Sec. 279, Ch. 286, Ch. 1959; R.C.M. 1947, 40-3722.

33-15-308. Explanation of charges. An insurer, health service corporation, or health maintenance organization that issues policies, certificates, membership contracts, or subscriber contracts for delivery in this state on or after January 1, 2000, and that limits payment of health care services based on standards described as usual and customary, reasonable and customary, prevailing fee, allowable charges, a relative value schedule, or other comparable terms shall include, displayed in the schedule page or elsewhere in the policy, certificate, membership contract, or subscriber contract:

(1) a definition of the term or terms and an explanation of how the limitation of payment based on the term or terms is derived;

(2) if the standard of the term or terms is derived by the use of a database, a description of the database reasonably calculated to inform the insured or certificate holder of the method used to define the geographic or demographic area from which the data used to determine the term or terms is derived; and

(3) a statement informing the insured that the insured's health care provider may charge more than the limits established by the defined terms and that the additional charges may not be covered by the policy, certificate, membership contract, or subscriber contract.

History: En. Sec. 1, Ch. 173, L. 1995; amd. Sec. 1, Ch. 134, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 134 in introductory phrase at beginning substituted "An insurer" for "A disability insurer", substituted "membership contracts, or subscriber contracts for delivery in this state on or after January 1, 2000, and that limits payment" for "or contracts, that issues policies, certificates, or contracts for delivery in this state, or that renews, extends, or modifies policies, certificates, or contracts on or after October 1, 1995, shall include in the disability policies, certificates, or contracts definitions for terms that limit payment", and at end inserted "or other comparable terms shall include, displayed in the schedule page or elsewhere in the policy, certificate, membership contract, or subscriber contract"; inserted (1) requiring definition and explanation of terms; inserted (2) requiring description of database if used; in (3) at beginning substituted "a statement informing the insured" for "These definitions must inform the insured" and at end substituted "membership contract, or subscriber contract" for "or contract"; and made minor changes in style. Amendment effective October 1, 1999.

33-15-309 through 33-15-314 reserved.

33-15-315. Validity of noncomplying forms. Any insurance policy, rider, or endorsement hereafter issued and otherwise valid which contains any condition or provision not in compliance with the requirements of this code shall not be thereby rendered invalid but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code.

History: En. Sec. 281, Ch. 286, L. 1959; R.C.M. 1947, 40-3724.

33-15-316. Construction of policies. Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any rider, endorsement, or application which is a part of the policy.

History: En. Sec. 282, Ch. 286, L. 1959; R.C.M. 1947, 40-3725.

33-15-317. Insurance coverage of punitive damages. (1) Insurance coverage does not extend to punitive or exemplary damages unless expressly included by the contract of insurance.

(2) Prior to renewal of any policy in effect on October 1, 1987, the insurer shall provide the insured with notice of nonrenewal of coverage of punitive or exemplary damages in the same manner as required by the commissioner of insurance for the renewal of policies with altered terms.

History: En. Sec. 3, Ch. 627, L. 1987.

Cross-References

Punitive damages — when allowed, 27-1-220.

Punitive damages — liability — proof — award, 27-1-221.

33-15-318. Safety program requirement in workers' compensation policies. A policy, contract, or agreement to insure an employer against a workers' compensation or occupational disease risk must require each insured employer to implement a safety program, as provided in 39-71-1507, as part of the policy, contract, or agreement to provide workers' compensation or occupational disease insurance coverage.

History: En. Sec. 11, Ch. 295, L. 1993.

33-15-319 and 33-15-320 reserved.

33-15-321. Life and disability insurance policy language simplification. Sections 33-15-321 through 33-15-329 may be cited as the "Life and Disability Insurance Policy Language Simplification Act".

History: En. Sec. 1, Ch. 302, L. 1981.

Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

33-15-322. Purpose. (1) The purpose of 33-15-321 through 33-15-329 is to establish minimum standards for language used in policies, contracts, and certificates of life, disability, credit life, and credit disability insurance delivered or issued for delivery in this state to facilitate ease of reading by insureds.

(2) Sections 33-15-321 through 33-15-329 are not intended to increase the risk assumed by insurance companies or other entities subject to 33-15-321 through 33-15-329 or to supersede their obligation to comply with the substance of other insurance legislation applicable to life, disability, credit life, or credit disability insurance policies. Sections 33-15-321 through 33-15-329 are not intended to impede flexibility and innovation in the development of policy forms or content or to lead to the standardization of policy forms or content.

History: En. Sec. 2, Ch. 302, L. 1981.

33-15-323. Definitions. As used in 33-15-321 through 33-15-329, the following definitions apply:

(1) "Company" or "insurer" means any life or disability insurance company, fraternal benefit society, nonprofit health service corporation, nonprofit hospital service corporation, nonprofit medical service corporation, prepaid health plan, dental care plan, vision care plan, pharmaceutical plan, health maintenance organization, and all similar types of organizations.

(2) "Policy" or "policy form" means any:

(a) policy, contract, plan, or agreement of life or disability insurance, including credit life and credit disability insurance, delivered or issued for delivery in this state by any company subject to 33-15-321 through 33-15-329;

(b) certificate, contract, or policy issued by a fraternal benefit society; and

(c) certificate issued pursuant to a group insurance policy delivered or issued for delivery in this state.

History: En. Sec. 3, Ch. 302, L. 1981.

33-15-324. Application — exceptions. (1) Sections 33-15-321 through 33-15-329 apply to all policies delivered or issued for delivery in this state by any company on or after the date such forms must be approved under 33-15-321 through 33-15-329, but nothing in 33-15-321 through 33-15-329 applies to:

(a) a policy which is a security subject to federal jurisdiction;

(b) a group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy or a group credit disability insurance policy, but a certificate issued pursuant to a group policy delivered or issued for delivery in this state is not exempt;

(c) a group annuity contract which serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;

(d) a form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under 33-15-321 through 33-15-329; or

(e) the renewal of a policy delivered or issued for delivery prior to the dates such forms must be approved under 33-15-321 through 33-15-329.

(2) Sections 33-15-321 through 33-15-329 provide the exclusive manner for determining language simplification standards for any policy forms.

(3) A non-English language policy delivered or issued for delivery in this state is in compliance with 33-15-325(1)(a) if the insurer certifies that the policy is translated from an English language policy which complies with 33-15-325(1)(a).

History: En. Sec. 4, Ch. 302, L. 1981.

33-15-325. Minimum policy language simplification standards. (1) In addition to any other requirements of law, no policy form, except as stated in 33-15-324, may be delivered or issued for delivery in this state on or after the date such form must be approved under 33-15-321 through 33-15-329, unless:

(a) the text achieves a minimum score of 40 on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection (3);

(b) it is printed, except for specification pages, schedules, and tables, in not less than 10-point type, 1-point leaded;

(c) the style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsements or riders; and

(d) it contains a table of contents or an index of the principal sections of the policy if the policy has more than 3,000 words printed on three or fewer pages of text, or if the policy has more than three pages regardless of the number of words.

(2) For the purposes of this section, a Flesch reading ease test score is measured by the following method:

(a) For policy forms containing 10,000 words or less of text, the entire form is analyzed. For policy forms containing more than 10,000 words, the readability of two 200-word samples per page may be analyzed instead of the entire form. The samples must be separated by at least 20 printed lines.

(b) The number of words and sentences in the text is counted and the total number of words is divided by the total number of sentences. The figure obtained is multiplied by a factor of 1.015.

(c) The total number of syllables is counted and divided by the total number of words. The figure obtained is multiplied by a factor of 84.6.

(d) The sum of the figures computed under subsections (2)(b) and (2)(c) subtracted from 206.835 equals the Flesch reading ease score for the policy form.

(e) For the purposes of subsections (2)(b) through (2)(d), the following procedures are used:

(i) a contraction, hyphenated word, or numbers and letters, if separated by spaces, are counted as one word;

(ii) a unit of words ending with a period, semicolon, or colon, but excluding headings and captions, is counted as a sentence; and

(iii) a syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. If the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(f) The term "text" as used in this section includes all printed matter except the following:

(i) the name and address of the insurer; the name, number, or title of the policy; the table of contents or index; captions and subcaptions; specification pages, schedules, or tables; and

(ii) policy language which is drafted to conform to the requirements of a federal law, regulation, or agency interpretation; policy language required by a collectively bargained agreement; medical terminology; words which are defined in the policy; and policy language required by law or regulation. The insurer must identify the language or terminology excepted by this subsection and certify in writing that the language or terminology is entitled to be excepted by this subsection.

(3) Any other reading test may be approved by the commissioner for use as an alternative to the Flesch reading ease test if it is comparable in result to the Flesch reading ease test.

(4) Filings subject to this section must be accompanied by a certificate signed by an officer of the insurer stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with 33-15-327. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.

(5) At the option of the insurer, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

History: En. Sec. 5, Ch. 302, L. 1981.

33-15-326. Construction — time period. Nothing in 33-15-321 through 33-15-329 may be construed to negate any law of this state permitting the issuance of any policy form after it has been on file for the time period specified.

History: En. Sec. 6, Ch. 302, L. 1981.

33-15-327. Powers of the commissioner. The commissioner may authorize a lower score than the Flesch reading ease score required in 33-15-325(1)(a) whenever, in his sole discretion, he finds that a lower score:

(1) will provide a more accurate reflection of the readability of a policy form;

(2) is warranted by the nature of a particular policy form or type or class of policy forms; or

(3) is caused by certain policy language which is drafted to conform to the requirements of any state law, regulation, or agency interpretation.

History: En. Sec. 7, Ch. 302, L. 1981.

33-15-328. Approval of forms. A policy form meeting the requirements of 33-15-325(1)(a) may be approved by the commissioner notwithstanding the provisions of other laws that specify content of policies if the approved policy form provides policyholders and claimants protection not less favorable than they would be entitled to under such laws.

History: En. Sec. 8, Ch. 302, L. 1981.

33-15-329. Applicability schedule. (1) Except as provided in 33-15-324, 33-15-321 through 33-15-329 apply to all policy forms filed on or after July 1, 1983.

No policy form may be delivered or issued for delivery in this state on or after July 1, 1986, unless approved by the commissioner or permitted to be issued under 33-15-321 through 33-15-329. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by 33-15-321 through 33-15-329 need not be refiled for approval but may continue to be lawfully delivered or issued for delivery in this state upon the filing with the commissioner of a list of such forms identified by form number and accompanied by a certificate as to each such form in the manner provided in 33-15-325(4).

(2) The commissioner may, in his sole discretion, extend the dates in subsection (1).

History: En. Sec. 10, Ch. 302, L. 1981.

33-15-330 through 33-15-332 reserved.

33-15-333. Short title. Sections 33-15-333 through 33-15-340 may be cited as the "Property and Casualty Insurance Policy Language Simplification Act".

History: En. Sec. 1, Ch. 416, L. 1993.

33-15-334. Purpose. (1) The purpose of 33-15-333 through 33-15-340 is to establish minimum language and format standards to make property and casualty policies easier to read.

(2) Sections 33-15-333 through 33-15-340 are not intended to increase the risk assumed under policies subject to 33-15-333 through 33-15-340. Sections 33-15-333 through 33-15-340 are not intended to impede flexibility and innovation in the development of policy forms or content. Sections 33-15-333 through 33-15-340 do not grant authority to the commissioner to mandate the standardization of policy forms or content.

History: En. Sec. 2, Ch. 416, L. 1993.

33-15-335. Definitions. As used in 33-15-333 through 33-15-340, the following definitions apply:

(1) "Casualty insurance" does not include accident and health or disability insurance.

(2) "Policy" or "policy form" means any written contract of property or casualty insurance delivered or issued for delivery in this state by or on behalf of any insurer licensed in this state.

History: En. Sec. 3, Ch. 416, L. 1993.

33-15-336. Applicability. (1) Other statutes of this state setting simplification standards for language or format do not apply to property and casualty policies.

(2) Sections 33-15-333 through 33-15-340 do not apply to policies in manuscript form or to the following kinds of insurance:

(a) ocean marine;

(b) surety and financial institution bonds;

(c) reinsurance;

(d) commercial aviation; or

(e) large commercial risks whose aggregate annual premiums for insurance on all risks totals at least $100,000.

(3) A non-English policy is considered in compliance with 33-15-337 if it was translated from an English policy that complies with 33-15-337.

History: En. Sec. 4, Ch. 416, L. 1993; amd. Sec. 25, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 inserted (2)(e) regarding certain large commercial risks; and made minor changes in style. Amendment effective October 1, 1999.

33-15-337. Minimum policy simplification standards. (1) All property and casualty policies subject to 33-15-333 through 33-15-340 must take into consideration the following factors:

(a) use of simple sentence structure, short sentences, and personal style;

(b) use of commonly understood words and everyday conversational language consistent with the policy's standing as a contract;

(c) avoidance of use of technical and legal terms and words with special meanings whenever possible;

(d) minimal reference to other sections or provisions of the policy;

(e) logical organization of text; and

(f) legibility.

(2) The policy must include a table of contents and notice section of important provisions.

(3) Each section must be self-contained and independent. However, general provisions applicable to more than one section may be included in a common section.

(4) The policy, except for declarations pages, schedules, and tables, must be printed in not less than 10-point type, 1-point leaded.

(5) The policy must be printed in a legible type style, with adequate contrast between ink and paper. Captions, headings, and spacings must be used to increase overall legibility.

(6) Policy exclusions may use technical terms, terms with special meanings, and court-interpreted terms to ensure policy clarity.

(7) Technical terms and words with special meanings must be avoided whenever possible.

(8) The policy text must achieve a minimum score of 40 on the Flesch reading ease test, an equivalent score on a comparable test, or a lower score on either if the commissioner finds the policy reasonably easy to read. For purposes of this section, a Flesch reading ease test must be scored by the following method:

(a) For a policy containing 10,000 words or less, the entire policy must be analyzed. For a policy containing more than 10,000 words, the readability of two 100-word samples per page may be analyzed instead. The samples must be separated by at least 20 printed lines.

(b) The total number of words in the text or sample must be divided by the total number of sentences. The figure obtained must be multiplied by 1.015.

(c) The total number of syllables in the text or sample must be divided by the total number of words. The figure obtained must be multiplied by 84.6.

(d) The sum of the figures computed under subsections (8)(b) and (8)(c) subtracted from 206.835 equals the Flesch reading ease test score.

(9) (a) For purposes of subsection (8), the following procedures must be used:

(i) A contraction, hyphenated word, number, and letter, when separated by spaces, are counted as one word.

(ii) A unit of text ending with a period, semicolon, or colon is counted as a sentence.

(iii) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. When the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(iv) At the option of the insurer, a form made a part of the policy may be scored separately or as part of the policy.

(b) The term "text", as used in this section, includes all printed matter except:

(i) the name and address of the insurer;

(ii) the name, number, or title of the policy or form;

(iii) the table of contents or index;

(iv) headings and captions; and

(v) declarations pages, schedules, or tables.

History: En. Sec. 5, Ch. 416, L. 1993.

33-15-338. Powers of commissioner. (1) At the commissioner's discretion, the commissioner may extend any dates under 33-15-333 through 33-15-340.

(2) The commissioner has sole authority to enforce the provisions of 33-15-333 through 33-15-340 or to seek remedies for its violation.

(3) The commissioner may authorize a lower score than the Flesch reading ease score required in 33-15-337 when, in the commissioner's discretion, a lower score:

(a) will provide a more accurate reflection of the readability of a policy;

(b) is warranted by the nature of a particular policy or type or class of policy; or

(c) is caused by certain policy language that is drafted to conform to the requirements of any state law, regulation, or agency interpretation.

History: En. Sec. 6, Ch. 416, L. 1993.

33-15-339. Compliance with other statutorily required language. The requirements of any other laws that specify the language or content of a policy may be met by a policy complying with the provisions of 33-15-337. However, the policy must provide protection that, considered as a whole, is not less favorable to the insured than is required by the other laws.

History: En. Sec. 7, Ch. 416, L. 1993.

33-15-340. Liability and coverage not imputed. The existence or nonexistence of coverage or liability under a policy may not be construed from policy approval by the commissioner.

History: En. Sec. 8, Ch. 416, L. 1993.

Part 4

Application, Issuance, Renewal, Assignment, and Return

33-15-401. Application required — life and disability insurance. No life or disability insurance contract upon an individual, except a contract of group life insurance or of group or blanket disability insurance, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, applies therefor or has consented thereto in writing, except in the following cases:

(1) A spouse may effectuate such insurance upon the other spouse.

(2) Any person having an insurable interest in the life of a minor or any person upon whom a minor is dependent for support and maintenance may effectuate insurance upon the life of or pertaining to such minor.

(3) Family policies insuring any two or more members of a family may be issued on an application signed by either parent, a stepparent, or by a husband or wife.

History: En. Sec. 268, Ch. 286, L. 1959; R.C.M. 1947, 40-3711.

Cross-References

Legal capacity to contract, Title 28, ch. 2, part 2.

AIDS testing — consent, 50-16-1007.

33-15-402. Application as evidence — copy to insured — alteration. (1) No application for the issuance of any life or disability insurance policy or annuity contract shall be admissible in evidence in any action relative to such policy or contract unless a true copy of the application was attached to or otherwise made a part of the policy or contract when issued. This provision shall not apply to industrial life insurance policies.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within 30 days after receipt of such request at its home office or at any of its branch offices, deliver or mail to the person making such request a copy of such application. If such copy is not so delivered or mailed after having been so requested, the insurer shall be precluded from introducing the application in evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. In the case of such request from a beneficiary, the time within which the insurer is required to furnish a copy of such application shall not begin to run until after receipt of evidence satisfactory to the insurer of the beneficiary's vested interest in the policy or contract.

(3) As to kinds of insurance other than life or disability insurance, no application for insurance signed by or on behalf of the insured shall be admissible in evidence in any action between the insured and the insurer arising out of the policy so applied for if the insurer has failed, at expiration of 30 days after receipt by the insurer of written demand therefor by or on behalf of the insured, to furnish to the insured a copy of such application reproduced by any legible means.

(4) No alteration of any written application for any life or disability insurance policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

History: En. Sec. 269, Ch. 286, L. 1959; R.C.M. 1947, 40-3712.

Cross-References

Evidence — admissibility of agreements, Rule 26(b), M.R.Civ.P. (see Title 25, ch. 20).

Nonadmissibility of liability insurance, Rule 411, M.R.Ev. (see Title 26, ch. 10).

Industrial life insurance defined, 33-20-102.

33-15-403. Representations in applications — recovery precluded if fraudulent or material. (1) All statements and descriptions in any application for an insurance policy or annuity contract or in negotiations for an insurance policy or annuity contract by or on behalf of the insured or annuitant are considered representations and not warranties.

(2) Misrepresentations, omissions, concealment of facts, and incorrect statements do not prevent a recovery under the policy or contract unless:

(a) fraudulent;

(b) material either to the acceptance of the risk or to the hazard assumed by the insurer; or

(c) the insurer in good faith would either not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the same premium or rate or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

(3) Subsection (2)(c) does not apply to nonrenewal or discontinuation of group health insurance offered in connection with a group health plan in the small group market or large group market, as those terms are defined in 33-22-140.

History: En. Sec. 270, Ch. 286, L. 1959; R.C.M. 1947, 40-3713; amd. Sec. 1, Ch. 416, L. 1997.

Cross-References

Fraud, misrepresentation, or mistake — contract rules, Title 28, ch. 2, part 4.

33-15-404 through 33-15-410 reserved.

33-15-411. Binders for temporary insurance. (1) Binders or other contracts for temporary insurance may be made orally or in writing and shall be deemed to include all the usual terms of the policy as to which the binder was given, together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

(2) No binder shall be valid beyond the issuance of the policy with respect to which it was given or beyond 90 days from its effective date, whichever period is the shorter.

(3) If the policy has not been issued, a binder may be extended or renewed beyond such 90 days with the written approval of the insurer.

(4) This section shall not apply to life or disability insurance.

History: En. Sec. 283, Ch. 286, L. 1959; R.C.M. 1947, 40-3726.

33-15-412. Delivery of policy. (1) Subject to the insurer's requirements as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance, except where a condition required by the insurer has not been met by the insured.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle or aircraft is insured, a duplicate of such policy setting forth the name and address of the insurer, insurance classification of vehicle or aircraft, type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy or memorandum thereof containing the same such information shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a statement of such fact shall be printed, written, or stamped conspicuously on the face of such duplicate policy or memorandum.

History: En. Sec. 284, Ch. 286, L. 1959; R.C.M. 1947, 40-3727.

33-15-413. Renewal by certificate. Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor, for a specific additional period or periods by certificate or by endorsement of the policy, and without requiring the issuance of a new policy.

History: En. Sec. 285, Ch. 286, L. 1959; R.C.M. 1947, 40-3728.

33-15-414. Assignment. (1) A policy or group certificate issued thereunder may be assignable or not assignable, as provided by its terms.

(2) Subject to its terms relating to the assignability, any life or disability policy or group certificate under either, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner, alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer.

(3) An assignment valid hereunder may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy or group certificate, including but not limited to the rights to designate beneficiaries and of a group certificate holder to have an individual policy issued in accordance with 33-20-1209 and 33-20-1210. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received at its home office written notice of

termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment; provided, however, that the insurer shall not be prejudiced by any payment made or action taken inconsistent with the terms of any assignment before the insurer has received and had reasonable time to act on written notice of such assignment.

(4) This section acknowledges, declares, and codifies the existing right of assignment of interests under insurance policies. An assignment otherwise valid shall not be invalid because it was made prior to July 1, 1971.

History: En. Sec. 286, Ch. 286, L. 1959; amd. Sec. 1, Ch. 167, L. 1971; R.C.M. 1947, 40-3729.

33-15-415. Notice of right to return policy. Each individual life or disability insurance policy, except a single-premium nonrenewable disability policy, issued for delivery in this state or issued after January 1, 1996, must contain a notice stating in substance that if the person to whom the policy is issued is not satisfied for any reason, the person may return the policy within 10 days of its delivery or a longer period if provided by the policy and have refunded directly to the person the premium paid. A policy returned pursuant to this section is void from the beginning.

History: En. Sec. 75, Ch. 379, L. 1995.

33-15-416. Dating of insurance applications — antedating prohibited. An application for issuance of an insurance policy may not be antedated by any person in order to obtain or provide coverage for losses or injuries incurred prior to the date of application.

History: En. Sec. 77, Ch. 379, L. 1995.

Part 5
Claims and Benefits

33-15-501. Payment discharges insurer — notice to contrary. Whenever the proceeds of or payments under a life or disability insurance policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract or the exercise of any right or privilege thereunder and the insurer makes payment thereof in accordance with the terms of the policy or contract or in accordance with any written assignment thereof, the person then designated in the policy or contract or by such assignment as being entitled thereto shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

History: En. Sec. 287, Ch. 286, L. 1959; R.C.M. 1947, 40-3730.

Cross-References

Extinction of contractual obligation by performance, Title 28, ch. 1, part 11.

Destruction of property to defraud insurer — crime, 45-6-101.

33-15-502. Minor may give acquittance. (1) Any minor domiciled in this state who has attained the age of 16 years shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding $3,000 in any one year made by a life insurer under the maturity, death, or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract, provided such policy, contract, or agreement shall provide for the payment or payments to such minor and if prior to such payment the insurer has not received written notice of the appointment of a duly qualified guardian of the property of the minor. No such minor shall be deemed competent to alienate the right to or to anticipate such payments. This section shall not be deemed to restrict the rights of minors set forth in 33-15-103.

(2) This section shall not be deemed to require any insurer to determine whether any other insurer may be effecting a similar payment to the same minor.

History: En. Sec. 288, Ch. 286, L. 1959; R.C.M. 1947, 40-3731.

Cross-References

Contractual capacity of minors, Title 41, ch. 1, part 3.

33-15-503. Forms for proof of loss to be furnished. An insurer shall furnish, upon written request of any person claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person, but such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion.

History: En. Sec. 289, Ch. 286, L. 1959; R.C.M. 1947, 40-3732.

Cross-References

Multiple proofs required — unfair trade practice, 33-18-201.

33-15-504. Claims administration not waiver. Without limitation of any right or defense of an insurer otherwise, none of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(1) acknowledgment of the receipt of notice of loss or claim under the policy;

(2) furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted;

(3) investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

History: En. Sec. 290, Ch. 286, L. 1959; R.C.M. 1947, 40-3733.

33-15-505 through 33-15-510 reserved.

33-15-511. Exemption from execution of life insurance proceeds. (1) If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of a person other than himself or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; except that, subject to the statute of limitations, the amount of any premiums for such insurance paid with intent to defraud creditors with interest thereon shall enure to their benefit from the proceeds of the policy, but the insurer issuing the policy shall be discharged of all liability thereof by payment of its proceeds in accordance with its terms, unless before such payment the insurer shall have received written notice at its home office, by or in behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount so claimed.

(2) For the purposes of subsection (1) above, a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

History: En. Sec. 291, Ch. 286, L. 1959; R.C.M. 1947, 40-3734.

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

Statutes of limitation, Title 27, ch. 2.

33-15-512. Exemption from execution of proceeds of group life — exception. (1) A policy of group life insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder shall not be liable, either before or after payment, to be applied by any legal or equitable process to pay any debt or liability of such insured individual or his beneficiary or of any other person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, shall not constitute a part of the estate of the individual insured for the payment of his debts.

(2) This section shall not apply to group life insurance issued pursuant to parts 10, 11, and 12 of chapter 20 to a creditor covering his debtors, to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued.

History: En. Sec. 292, Ch. 286, L. 1959; R.C.M. 1947, 40-3735.

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

Bankruptcy proceedings — proceeds as exempt property, 31-2-106.

33-15-513. Exemption from execution of proceeds of disability insurance. The proceeds or avails of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured and from any debt of the beneficiary existing at the time the proceeds are made available for his use.

History: En. Sec. 293, Ch. 286, L. 1959; R.C.M. 1947, 40-3736.

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

33-15-514. Exemption from execution of proceeds of annuity contracts — assignability of rights. (1) The benefits, rights, privileges, and options which under any annuity contract heretofore or hereafter issued are due or prospectively due the annuitant shall not be subject to execution, nor shall the annuitant be compelled to exercise any such rights, powers, or options, nor shall creditors be allowed to interfere with or terminate the contract, except:

(a) as to amounts paid for or as premium on any such annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to the making of the payments to the annuitant out of which the creditor seeks to recover. Any such notice shall specify the amount claimed or such facts as will enable the insurer to ascertain such amount and shall set forth such facts as will enable the insurer to ascertain the annuity contract, the annuitant, and the payments sought to be avoided on the ground of fraud.

(b) the total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under which he is an annuitant shall not at any time exceed $250 per month for the length of time represented by such installments and that such periodic payments in excess of $350 per month shall be subject to garnishee execution;

(c) if the total benefits presently due and payable to any annuitant under all annuity contracts under which he is an annuitant shall at any time exceed payment at the rate of $350 per month, then the court may order such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such portion of such excess benefits as to the court may appear just and proper, after due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) If the contract so provides, the benefits, rights, privileges, or options accruing under such contract to a beneficiary or assignee shall not be transferable or subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions contained herein for the annuitant shall apply with respect to such beneficiary or assignee.

(3) An annuity contract within the meaning of this section shall be any obligation to pay certain sums at stated times during life or lives or for a specified term or terms, issued for a valuable consideration, regardless of whether or not such sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives or for a specified term or terms.

History: En. Sec. 294, Ch. 286, L. 1959; R.C.M. 1947, 40-3737.

Cross-References

Exemptions from executions, Title 25, ch. 13, part 6.

Bankruptcy proceedings — proceeds as exempt property, 31-2-106.

Parts 6 through 10 reserved

Part 11

Premium Changes and Cancellation Property or Casualty Insurance

Part Cross-References

Casualty insurance, Title 33, ch. 23.

Property insurance, Title 33, ch. 24.

33-15-1101. Purpose — applicability. (1) The purpose of this part is to protect the public with regard to insurance transactions that involve cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance by:

(a) regulating the grounds for midterm cancellation of an insurance policy;

(b) prohibiting midterm increases in premiums;

(c) increasing the opportunity for insureds to shop for replacement or substitute insurance;

(d) reducing the opportunity for breach of contract, misrepresentation by omission or untimely disclosure, and unfair discrimination among insureds; and

(e) increasing the opportunity for insurance producers to compete freely.

(2) This part applies to those forms of insurance defined in 33-1-206 and 33-1-210, except to the extent they conflict with chapter 23 of this title.

(3) This part does not limit the activities that may constitute undefined unfair trade practices prohibited by 33-18-1003. The commissioner may apply other provisions of this code to insurance transactions involving cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance. Policies may provide terms more favorable to insureds than are required by this

part. The rights provided by this part are in addition to and do not prejudice any other rights that the insured may have under common law, statutes, or rules.

History: En. Sec. 1, Ch. 120, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-15-1102. Definitions. As used in this part, the following definitions apply unless the context requires otherwise:

(1) "Anniversary date" means the month and day that rates, rating plans, and rating systems are initially applied to a policy in effect. The term includes each annual anniversary thereafter unless the insurer establishes a different date by a filing with the commissioner.

(2) "Cancellation" means the decision by the insurer to terminate an insurance policy prior to the expiration of its term.

(3) "Classification" means an arrangement of insurance risks into an underwriting or rating group according to a classification system used by an insurer as a basis for tabulating statistical experience and determining premium rates.

(4) "Classification system" means a schedule of classifications and a rule used by an insurer for determining the classifications applicable to an insured.

(5) "Insurer" means an insurer authorized to transact property or casualty insurance in this state or an unauthorized insurer transacting surplus lines insurance in this state.

(6) "Premium" means the contractual consideration charged to an insured for insurance for a specified period of time, regardless of the timing of actual charges.

(7) "Rate" means a monetary amount applied to the units of exposure assigned to a classification and used by an insurer to determine the premium for an insured.

(8) "Rating plan" means a rule used by an insurer to calculate:

(a) the premium for an insured; and

(b) the parameter values used in such calculation after application of classification premium rates to units of exposure.

(9) "Renewal" means an agreement between an insurer and an insured to extend or continue an existing insurance policy for 90 days or more.

History: En. Sec. 2, Ch. 120, L. 1987; amd. Sec. 4, Ch. 180, L. 1991.

33-15-1103. Midterm cancellation. (1) An insurer may not cancel an insurance policy before either the expiration of the agreed term or 1 year from the effective date of the policy or renewal date, whichever is less, except:

(a) for reasons specifically allowed by statute;

(b) for failure to pay a premium when due; or

(c) on grounds stated in the policy which pertain to the following:

(i) material misrepresentation;

(ii) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk when the contract was written;

(iii) substantial breaches of contractual duties, conditions, or warranties;

(iv) determination by the commissioner that continuation of the policy would place the insurer in violation of this code;

(v) financial impairment of the insurer; or

(vi) any other reason approved by the commissioner.

(2) Cancellation under subsection (1) is not effective until 10 days after a notice of cancellation is either delivered or mailed to the insured.

(3) Subsections (1) and (2) do not apply to a newly issued insurance policy if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subsection is effective until 10 days after the notice is delivered or mailed to the insured.

(4) If a policy has been issued for a term longer than 1 year and if either the premium is prepaid or an agreed term is guaranteed for additional premium consideration, the insurer may not cancel the policy except:

(a) for reasons specifically allowed by statute;

(b) for failure to pay a premium when due; or

(c) on grounds stated in the policy which pertain to those grounds listed in subsection (1)(c).

History: En. Sec. 3, Ch. 120, L. 1987.

33-15-1104. Anniversary cancellation — anniversary rate increases. (1) An insurer may issue a policy for a term longer than 1 year or for an indefinite term if the policy contains a clause that allows cancellation by the insurer if the insurer gives notice 30 days prior to an anniversary date.

(2) If a policy has been issued for a term longer than 1 year and for additional premium consideration an annual premium has been guaranteed, the insurer may not increase the annual premium for the term of that policy.

History: En. Sec. 4, Ch. 120, L. 1987.

33-15-1105. Nonrenewal — renewal premium. (1) (a) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least 30 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a notice of such intention. The insurer shall also mail or deliver a copy to the insured's insurance producer.

(b) Notification or nonrenewal to the insured's insurance producer via electronic transfer of data or by electronic data retrieval device meets the requirement of a mailed or delivered copy.

(2) An insurer shall give notice of premium due not more than 60 days or less than 10 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable.

(4) An insurer may not refuse to renew a property and casualty insurance policy on the basis of a single loss occurring during the policy period unless the insurer has previously disclosed in writing to the insured, at the time that the insured applied for the insurance or prior to the insured's renewal, that a single loss is among the insurer's criteria for nonrenewal.

History: En. Sec. 5, Ch. 120, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 21, Ch. 531, L. 1997; amd. Sec. 1, Ch. 364, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 364 inserted (4) prohibiting an insurer from refusing to renew a property and casualty policy because of a single loss unless the insurer previously told the insured that a single loss was a criteria for nonrenewal. Amendment effective October 1, 1999.

Applicability: Section 2, Ch. 364, L. 1999, provided: "[This act] applies to new or renewed property and casualty insurance policies in effect on or after January 1, 2000."

33-15-1106. Renewal with altered terms. (1) If an insurer offers or purports to renew a policy but on less favorable terms, at a higher rate, or at a higher rating plan, the new terms, rate, or rating plan take effect on the policy renewal date only if the insurer has mailed or delivered notice of the new terms, rate, or rating plan to the insured at least 30 days before the expiration date.

(2) This section does not apply if the increase in the rate or the rating plan, or both, results from a classification change based on the altered nature or extent of the risk insured against.

History: **En. Sec. 6, Ch. 120, L. 1987; amd. Sec. 4, Ch. 699, L. 1991; amd. Sec. 22, Ch. 531, L. 1997.**

33-15-1107. Information about grounds for nonrenewal. (1) If the insurer or insurance producer receives a written request from an insured within 60 business days from the date on which the insurer mailed a notice of cancellation or nonrenewal to the insured, the insurer or insurance producer shall, within 21 days of receiving the insured's written request, furnish the insured the information that the insurer or insurance producer used to make its decision. A notice is not effective unless it contains adequate information about the insured's right to make the request.

(2) This section does not apply if the ground for cancellation or nonrenewal is nonpayment of the premium and the reason is stated in the notice.

History: **En. Sec. 7, Ch. 120, L. 1987; amd. Sec. 26, Ch. 472, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 472 in (1) at beginning substituted "If the insurer or insurance producer receives a written request from an insured within 60 business days from the date on which the insurer mailed a notice of cancellation or nonrenewal to the insured, the insurer or insurance producer shall, within 21 days of receiving the insured's written request, furnish the insured the information that the insurer or insurance producer used to make its decision" for "If an insured questions the facts upon which an insurer's decision to cancel or not renew is based, the insurer shall mail or deliver such information to the insured within 15 working days of receiving a written request from the insured"; and made minor changes in style. Amendment effective October 1, 1999.

33-15-1108 through 33-15-1110 reserved.

33-15-1111. Homeowner insurance not affected by day-care operations. (1) No insurer writing homeowner insurance in this state may deny an applicant homeowner insurance or cancel or refuse to renew a homeowner insurance policy covering a dwelling located in this state for the principal reason that an insured under the policy operates at the insured location a day-care facility, as defined in 52-2-703, that satisfies the requirements of 52-2-723 or 52-2-724.

(2) This section does not prevent an insurer from excluding or limiting coverage with respect to liability or property losses arising out of an insured's business pursuits, including those related to the operation of a day-care facility.

History: **En. Sec. 8, Ch. 120, L. 1987.**

Cross-References

Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty, 33-23-401.

33-15-1112 through 33-15-1120 reserved.

33-15-1121. Unfair trade practices. (1) The failure of an insurer to comply with this part constitutes an unfair trade practice under 33-18-1003.

(2) Midterm premium increases and policy coverage reductions not in compliance with this part that are attempted or executed constitute unfair trade practices under 33-18-1003.

History: **En. Sec. 9, Ch. 120, L. 1987.**

CHAPTER 16

RATES — RATING AND ADVISORY ORGANIZATIONS

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Chapter Cross-References

Penalties for violation of Montana Insurance Code — general provision, 33-1-104.

Penalty for violation of chapter, 33-16-114.

Additional penalties for violation of chapter, 33-22-911.

Part 1

General Provisions

33-16-101. Purpose and intent. (1) The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate, or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize cooperation between insurers in ratemaking and other related matters.

(2) It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. Sec. 1, Ch. 362, L. 1969; R.C.M. 1947, 40-3634.

33-16-102. Definitions. In this chapter, the following definitions apply:

(1) "Advisory organization" means each person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans, or rating systems or who collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a ratemaking, capacity. A licensed attorney, acting in the usual course of the profession, may not be considered an advisory organization.

(2) "Dividend" means:

(a) a noncontractual and nonrecoverable payment or credit declared by an insurer's board of directors and paid out or credited out of earned surplus to policyholders, members, or subscribers; or

(b) in the absence of earned surplus, a noncontractual and nonrecoverable payment or credit declared by an insurer's board of directors and paid to policyholders, members, or subscribers with the written permission of the commissioner. The commissioner may grant permission only if the payment of the dividend or credit will not reduce the insurer's capital below an amount three times the minimum capital required under 33-2-109.

(3) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory, or other organization.

(4) "Rating organization" means each person, other than an admitted insurer, whether located within or outside this state, with the object or purpose of making rates, rating plans, or rating systems. Two or more admitted insurers who act in concert for the purpose of making rates, rating plans, or rating systems and who do not operate within the specific authorizations contained in 33-16-105, 33-16-302, 33-16-304, 33-16-305, and 33-16-307 must be considered a rating organization. A single insurer may not be considered a rating organization.

(5) "Subscriber" means an insurer who is furnished at its request with rates and rating manuals by a rating organization of which the insurer is not a member or with advisory services by an advisory organization of which it is not a member.

(6) "Willful" or "willfully", in relation to an act or omission that constitutes a violation of this chapter, means with actual knowledge or belief that the act or omission constitutes a violation and with specific intent to commit the violation.

History: En. Secs. 2, 3, 4, 5, Ch. 362, L. 1969; R.C.M. 1947, 40-3635, 40-3636, 40-3637, 40-3638; amd. Sec. 27, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 inserted definition of dividend; and made minor changes in style. Amendment effective October 1, 1999.

33-16-103. Application. This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter applies to:

(1) life insurance;

(2) disability insurance, except medicare supplement insurance subject to the provisions of chapter 22, part 9;

(3) reinsurance, except joint reinsurance as provided in 33-16-307;

(4) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft;

(5) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; or

(6) surplus lines insurance as defined in 33-2-301.

History: En. Sec. 6, Ch. 362, L. 1969; amd. Sec. 1, Ch. 558, L. 1977; R.C.M. 1947, 40-3639; amd. Sec. 1, Ch. 126, L. 1981; amd. Sec. 1, Ch. 400, L. 1989; amd. Sec. 1, Ch. 682, L. 1989.

33-16-104. Payment of dividends, savings, or unabsorbed premium deposits not prohibited or regulated — plan for payment not rating system. Nothing in this chapter may be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers may not be considered a rating plan or system. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers does not relieve the insurer from complying with any requirements of this chapter regarding rating plans or systems.

History: En. Sec. 33, Ch. 362, L. 1969; R.C.M. 1947, 40-3666; amd. Sec. 28, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 inserted third sentence providing that a payment plan does not relieve the insurer from statutory compliance; and made minor changes in style. Amendment effective October 1, 1999.

33-16-105. Maintenance of records. Every insurer, rating organization, or advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

History: En. Sec. 21, Ch. 362, L. 1969; amd. Sec. 1, Ch. 469, L. 1977; R.C.M. 1947, 40-3654(1).

33-16-106. Examination by commissioner of rating organizations, admitted insurers, officers, managers, insurance producers, and employees — expense. (1) (a) The commissioner may, as often as may be reasonable and necessary, make or cause to be made an examination of each licensed rating organization. The commissioner may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory organization or group, association, or other organization of insurers that engages in joint underwriting or joint reinsurance.

(b) In lieu of an examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state or by the national association of insurance commissioners.

(c) In examining any organization, group, or association pursuant to this section, the commissioner shall ascertain whether an organization, group, or association and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

(2) The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether the insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable to it. The examination may not be a part of a periodic general examination participated in by representatives of more than one state.

(3) The officers, managers, insurance producers, and employees of any organization, group, association, or insurer may be examined at any time under

oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation, together with all data, statistics, and information of every kind and character collected or considered by an organization, group, association, or insurer in the conduct of the operations to which the examination relates.

(4) The reasonable cost of any examination authorized by this article must be paid by the organization, group, association, or insurer to be examined.

History: En. Secs. 22, 23, 24, 25, Ch. 362, L. 1969; R.C.M. 1947, 40-3655, 40-3656, 40-3657, 40-3658; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 19, Ch. 451, L. 1993.

33-16-107. Information not to be willfully withheld. No person, insurer, or organization shall willfully withhold information from or knowingly give false or misleading information to the commissioner or to any rating organization, advisory organization, insurer, or group, association, or other organization of insurers which will affect the rates, rating systems, or premiums for the classes of insurance to which the provisions of this chapter are applicable.

History: En. Sec. 32, Ch. 362, L. 1969; R.C.M. 1947, 40-3665(a).

Cross-References

Penalties for violation of Montana Insurance Code — general provision, 33-1-104.

Penalty for violation of chapter, 33-16-114.

33-16-108 through 33-16-110 reserved.

33-16-111. Issuance of order — suspension or revocation of certificate of authority or license. If, after a hearing pursuant to 33-16-206, the commissioner finds:

(1) that an insurer, rating organization, advisory organization, or a group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans, or rating systems, he may issue an order to such insurer, organization, group, or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter;

(2) that the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing;

(3) that any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

History: En. Sec. 29, Ch. 362, L. 1969; R.C.M. 1947, 40-3662(part).

Cross-References

Hearings by Commissioner, 33-1-701.

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

Unfair trade practices, Title 33, ch. 18.

33-16-112. Failure to comply with order — suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to 33-16-111 and 33-16-211 and effective pursuant to 33-16-113.

History: En. Sec. 30, Ch. 362, L. 1969; R.C.M. 1947, 40-3663.

Cross-References

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

33-16-113. Appeal from order or decision of commissioner. Any person, insurer, or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal therefrom to the district court of the county where the aggrieved party may reside or has his principal place of business in this state or to the district court of Lewis and Clark County, Montana. The appeal shall be taken within 30 days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within 20 days after filing of the notice, make and return to the district court a full and complete certified transcript of the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon filing of the certified transcript, all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review, the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

History: En. Sec. 31, Ch. 362, L. 1969; R.C.M. 1947, 40-3664.

Cross-References

Judicial appeals of contested administrative proceedings, 2-4-702.

Appeals from Commissioner's decision, 33-1-711.

33-16-114. Penalty. (1) Any person, insurer, organization, group, or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding $50. If such failure be willful, he or it shall be liable to the state in an amount not exceeding $5,000 for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the state of Montana to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(2) A willful violation of the provisions of this chapter by any person is a misdemeanor.

History: En. Sec. 32, Ch. 362, L. 1969; R.C.M. 1947, 40-3665(b), (c).

Cross-References

Legal actions by state agencies — Attorney General to be notified, 25-1-501.

General penalty — Montana Insurance Code, 33-1-104.

33-16-115. Acts done by authority of chapter not violation of other laws. No act done, action taken, or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 34, Ch. 362, L. 1969; R.C.M. 1947, 40-3667.

Cross-References

Unlawful price fixing, 30-14-205.

33-16-116. Administration or enforcement — supplementation or modification. The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

History: **En. Sec. 35, Ch. 362, L. 1969; R.C.M. 1947, 40-3668.**

Part 2

Rates and Rating Plans

33-16-201. Standards applicable to rates. The following standards apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates may not be excessive or inadequate, and they may not be unfairly discriminatory.

(b) A rate may not be held to be excessive unless the rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable.

(c) A rate may not be held to be inadequate unless the rate is unreasonably low for the insurance provided and the continued use of the rate endangers the solvency of the insurer using the rate or unless the rate is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2)(a) Consideration must be given, when applicable, to past and prospective loss experience within and outside this state, to revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of the insurer or group with respect to any kind of insurance or with respect to any subdivision or combination of insurance.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Special risk classifications may be established based upon favorable aspects of an insured's claims history that is 3 years old or older. However, a special risk classification may not be established based on anything adverse to the insured in a driving record that is 3 years old or older. Classifications and modifications apply to all risks under the same or substantially the same circumstances or conditions.

History: **En. Sec. 7, Ch. 362, L. 1969; amd. Sec. 1, Ch. 54, L. 1973; amd. Sec. 1, Ch. 104, L. 1973; R.C.M. 1947, 40-3640; amd. Sec. 1, Ch. 320, L. 1995.**

33-16-202. Recording and reporting of loss and expense experience. (1) The commissioner may promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, which must be used by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in form and detail as necessary to aid the commissioner in determining whether rates comply with the applicable standards of this chapter. The rules and plans may also provide for the recording and reporting of expense experience items that are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating rules and plans, the commissioner shall give consideration to the rating systems in use in this state and, in order that the rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for rating systems in other states. An insurer may not be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(3) The commissioner may designate one or more rating organizations or other agencies to assist in gathering and making compilations of loss and expense experience, and the compilations must be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History: En. Sec. 36, Ch. 362, L. 1969; R.C.M. 1947, 40-3669; amd. Sec. 47, Ch. 379, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Promulgation of rules by Commissioner, 33-1-313.

33-16-203. Rates filed. (1) Every insurer, rating organization, or advisory organization shall file with the commissioner all rates intended for use within this state, together with supporting data sufficient to substantiate such filing. The filing required by this subsection may be made by rating organizations on behalf of their members and subscribers; but this provision does not prohibit a member or subscriber from filing any such rates on its own behalf. Any deviations from a rating organization's rates by a member or subscriber must be filed with the commissioner and must be accompanied by supporting data.

(2) In accordance with 33-16-222, rates filed must provide for a premium reduction to qualified insured operators 55 years of age or older.

History: En. Sec. 21, Ch. 362, L. 1969; amd. Sec. 1, Ch. 469, L. 1977; R.C.M. 1947, 40-3654(2); amd. Sec. 1, Ch. 241, L. 1979; amd. Sec. 7, Ch. 49, L. 1987.

33-16-204. Review of rates on request by aggrieved person. (1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative and shall be written.

(2) If the request is not granted within 30 days after it is made, the requester may treat it as rejected.

(3) Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in 33-16-205.

History: **En. Sec. 26, Ch. 362, L. 1969; R.C.M. 1947, 40-3659.**

Cross-References

Public documents open to public inspection, Art. II, sec. 9, Mont. Const.; 2-6-104.

33-16-205. Noncompliance of rates — notice. If, after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers that engages in joint underwriting or joint reinsurance or upon the basis of other information or upon sufficient complaint as provided in 33-16-204, the commissioner has good cause to believe that the insurer, organization, group, or association or any rate, rating plan, or rating system made or used by the insurer or rating organization does not comply with the requirements and standards of this chapter applicable to it, the commissioner shall, unless the commissioner has good cause to believe that the noncompliance is willful, give notice, in writing, to the insurer, organization, group, or association stating in what manner and to what extent the noncompliance is alleged to exist and specifying a reasonable time, not less than 10 days after receipt, in which the noncompliance may be corrected.

History: **En. Sec. 27, Ch. 362, L. 1969; R.C.M. 1947, 40-3660; amd. Sec. 9, Ch. 416, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 416 deleted former second sentence that read: "Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under 33-16-206"; and made minor changes in style. Amendment effective October 1, 1999.

33-16-206. Hearings — notice — subject of hearing. (1) If the commissioner has good cause to believe such noncompliance to be willful or if within the period prescribed by the commissioner in the notice required by 33-16-205 the insurer, organization, group, or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than 10 days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group, or association. If no notice has been given as provided in 33-16-205, such notice shall state therein in what manner and to what extent noncompliance is alleged to exist.

(2) The hearing shall not include any additional subjects not specified in the notices required by 33-16-205 or this section.

History: **En. Sec. 28, Ch. 362, L. 1969; R.C.M. 1947, 40-3661.**

Cross-References

Hearings by Commissioner, 33-1-701.

33-16-207 through 33-16-210 reserved.

33-16-211. Order prohibiting use of rate or rating system. If, after a hearing pursuant to 33-16-206, the commissioner finds that any rate, rating plan, or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

History: **En. Sec. 29, Ch. 362, L. 1969; R.C.M. 1947, 40-3662(part).**

33-16-212 through 33-16-220 reserved.

33-16-221. Short title. Sections 33-16-221 through 33-16-225 may be cited as the "Mature Defensive Driving Act".

History: En. Sec. 1, Ch. 49, L. 1987.

33-16-222. Requirement for rate reduction. (1) Any rates, rating schedules, or rating manuals for liability, bodily injury, or collision coverages of a motor vehicle insurance policy filed with the insurance department must provide for an appropriate premium reduction as determined by the insurer for an insured operator of a covered vehicle who is 55 years of age or older and who has successfully completed a highway traffic safety program as provided by 61-2-102 and 61-2-103.

(2) Any discount used by the insurer is presumed appropriate unless credible data demonstrates otherwise.

History: En. Sec. 2, Ch. 49, L. 1987.

33-16-223. Effective period of reduction. (1) The premium reduction required by 33-16-222 is effective for an insured for a 2-year period after successful completion of the approved course. Each person shall take an approved course every 2 years in order to continue to be eligible for the reduction in premium required by 33-16-222.

(2) An insurer may require, as a condition of maintaining the discount, any or all of the following:

(a) that the insured not be involved in an accident in which he is at fault;

(b) that the insured not be convicted of or plead guilty or nolo contendere to a moving traffic violation; or

(c) that the insured not have forfeited bail or collateral for a moving traffic violation.

History: En. Secs. 3, 6, Ch. 49, L. 1987.

33-16-224. Certificate. The organization offering the approved course shall issue a certificate to each person who successfully completes the course, which qualifies him for the premium discount required by 33-16-222.

History: En. Sec. 4, Ch. 49, L. 1987.

33-16-225. When discount not applicable. The provisions of 33-16-222 do not apply if the approved course is taken as punishment specified by a court or other governmental entity for a moving traffic violation.

History: En. Sec. 5, Ch. 49, L. 1987.

33-16-226 through 33-16-230 reserved.

33-16-231 through 33-16-236. Repealed. Sec. 1, Ch. 79, L. 1995.

Compiler's Comments

Histories of Repealed Sections:

33-16-231.	En. Sec. 2, Ch. 400, L. 1989.
33-16-232.	En. Sec. 3, Ch. 400, L. 1989.
33-16-233.	En. Sec. 4, Ch. 400, L. 1989.
33-16-234.	En. Sec. 5, Ch. 400, L. 1989.
33-16-235.	En. Sec. 6, Ch. 400, L. 1989.
33-16-236.	En. Sec. 7, Ch. 400, L. 1989.

Part 3

Insurers Acting in Concert

Part Cross-References

Unlawful price fixing, 30-14-205.

33-16-301. Insurers authorized to act in concert. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

History: En. Sec. 8, Ch. 362, L. 1969; R.C.M. 1947, 40-3641.

33-16-302 . Insurers with common ownership or cosureties on bond — acting in concert. With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to cosurety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

History: En. Sec. 9, Ch. 362, L. 1969; R.C.M. 1947, 40-3642.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Workers' compensation rates and rating organizations, Title 33, ch. 16, part 10.

Workers' compensation, Title 39, ch. 71.

33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations — agreements to adhere to. (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of those organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305, 33-16-307, 33-16-1008, and 33-16-1020 through 33-16-1036, may not agree with each other or rating organizations or others to adhere to the organizations' rates, systems, rules, or policy or bond forms.

(2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization is not sufficient in itself to support a finding that an agreement prohibited under subsection (1) exists and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any agreement.

History: En. Sec. 10, Ch. 362, L. 1969; amd. Sec. 2, Ch. 558, L. 1977; R.C.M. 1947, 40-3643; amd. Sec. 19, Ch. 186, L. 1995.

33-16-304. Exchange of information or experience data — consultation with rating organizations and insurers. Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to ratemaking and the application of rating systems.

History: En. Sec. 11, Ch. 362, L. 1969; R.C.M. 1947, 40-3644.

33-16-305. Agreements for apportionment of casualty insurance — approval of commissioner — review of practices of adherents — revocation of approval. (1) Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

(2) All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate:

(a) the use of rates which meet the standards prescribed by this chapter; and

(b) activities and practices that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this chapter.

(3) At any time after such agreements are in effect, the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing upon not less than 10 days' notice to such adherents, he finds that any such practice or activity is unfair or unreasonable or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement, specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of such activity or practice. For good cause and after hearing upon not less than 10 days' notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

History: **En. Sec. 12, Ch. 362, L. 1969; R.C.M. 1947, 40-3645.**

Cross-References

Hearings by Commissioner, 33-1-701.

Casualty insurance — general provisions, Title 33, ch. 23.

33-16-306. Joint underwriters and reinsurers — compliance. Upon compliance with the provisions of this chapter applicable thereto, any rating organization, advisory organization, and any group, association, or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group, or association that has not complied with the provisions of this chapter applicable to it.

History: **En. Sec. 13, Ch. 362, L. 1969; R.C.M. 1947, 40-3646.**

33-16-307. Joint underwriting and joint reinsurance — application — restrictions on operations. (1) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association, or organization or by standing agreement among the members thereof, shall file with the commissioner:

(a) a copy of its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing its activities, all duly certified by the custodian of the originals thereof;

(b) a list of its members; and

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

(2) Every such group, association, or other organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and its bylaws and rules governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such group, association, or organization may be served.

(3) No such group, association, or organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: **En. Sec. 20, Ch. 362, L. 1969; R.C.M. 1947, 40-3653.**

Cross-References

Unfair trade practices, Title 33, ch. 18.

33-16-308. Advisory organizations — application — requisites — restrictions on operations. (1) No advisory organization shall conduct its operations in this state unless and until it has filed with the commissioner:

(a) a copy of its constitution, articles of incorporation, agreement, or association, and of its bylaws or rules governing its activities, all duly certified by the custodian of the originals thereof;

(b) a list of its members and subscribers; and

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

(2) Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(3) No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 19, Ch. 362, L. 1969; R.C.M. 1947, 40-3652.

Cross-References

Unfair trade practices, Title 33, ch. 18.

Part 4

Rating Organizations

33-16-401. Rating organizations — compliance — application. (1) No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for and securing a license to act as a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter.

(2) Every such rating organization shall file with its application:

(a) a copy of its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business, all duly certified by the custodian or the originals thereof;

(b) a list of its members and subscribers;

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(d) a statement of its qualifications as a rating organization.

History: En. Sec. 14, Ch. 362, L. 1969; R.C.M. 1947, 40-3647.

33-16-402. Evidence prerequisite to license. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(1) permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination or withdraw therefrom;

(2) neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules, or policy or bond forms;

(3) neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(4) neither practice nor sanction any plan or act of boycott, coercion, or intimidation;

(5) neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business;

(6) notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served;

(7) comply with the provisions of 33-16-105 and 33-16-203.

History: En. Sec. 15, Ch. 362, L. 1969; R.C.M. 1947, 40-3648.

33-16-403. Examination of application and investigation of applicant — issuance of license — fee. (1) The commissioner shall examine each application for license to act as a rating organization pursuant to this part or a workers' compensation advisory organization pursuant to part 10 and the documents filed with the application and may make such further investigation of the applicant, its affairs, and its proposed plan of business as the commissioner considers desirable.

(2) The commissioner shall issue the license applied for within 60 days of its filing if, from the examination and investigation, the commissioner is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish;

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of the decision and the reasons therefor.

(4) The commissioner may grant an application in part only and issue a license to act as a rating or workers' compensation advisory organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) (a) Except as provided in subsection (5)(b), licenses issued pursuant to this section remain in effect until revoked as provided in this chapter. The fee for the license is $100 annually and must be deposited in the general fund.

(b) Each workers' compensation advisory organization is required to renew its license annually.

History: En. Sec. 16, Ch. 362, L. 1969; amd. Sec. 1, Ch. 206, L. 1973; R.C.M. 1947, 40-3649; amd. Sec. 20, Ch. 186, L. 1995.

Cross-References

Hearings by Commissioner, 33-1-701.

33-16-404. Rules governing eligibility for membership. Subject to the approval of the commissioner, licensed rating organizations may make reasonable rules governing eligibility for membership.

History: En. Sec. 17, Ch. 362, L. 1969; R.C.M. 1947, 40-3650.

33-16-405. Insurers with common ownership or management. If two or more insurers having a common ownership or operating in this state under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

History: En. Sec. 18, Ch. 362, L. 1969; R.C.M. 1947, 40-3651.

Parts 5 through 9 reserved

Part 10

Workers' Compensation Rates and Advisory Organizations

33-16-1001. Declaration of policy and purpose. (1) It is declared that the public welfare is served by the making of advisory premium rates for workers' compensation insurance coverage in concert.

(2) It is the purpose of this part to:

(a) authorize such ratemaking in concert and the operating of rating organizations thereto; and

(b) establish the general bases and standards for the making of such rates.

History: En. Sec. 1, Ch. 329, L. 1969; amd. Sec. 3, Ch. 558, L. 1977; R.C.M. 1947, 40-5601.

33-16-1002. Applicability of part. This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22, or related employer's liability insurance, but does not apply to reinsurance.

History: En. Sec. 2, Ch. 329, L. 1969; amd. Sec. 4, Ch. 558, L. 1977; R.C.M. 1947, 40-5602; amd. Sec. 21, Ch. 186, L. 1995.

33-16-1003. Certain reciprocal insurers excluded. This part shall not apply as to any reciprocal insurer transacting workers' compensation insurance only and insuring solely the hazards or perils of its subscribers exclusively associated with a single industry.

History: En. Sec. 3, Ch. 329, L. 1969; R.C.M. 1947, 40-5603.

Cross-References

Reciprocal insurers — general provisions, Title 33, ch. 5, part 1.

33-16-1004. Repealed. Sec. 29, Ch. 186, L. 1995.

History: En. Secs. 4, 5, 6, Ch. 329, L. 1969; R.C.M. 1947, 40-5604, 40-5605, 40-5606; amd. Sec. 1, Ch. 480, L. 1991.

33-16-1005. Repealed. Sec. 29, Ch. 186, L. 1995.

History: En. Sec. 16, Ch. 329, L. 1969; amd. Sec. 5, Ch. 558, L. 1977; R.C.M. 1947, 40-5616; amd. Sec. 3, Ch. 232, L. 1987; amd. Sec. 53, Ch. 613, L. 1989; amd. Sec. 14, Ch. 630, L. 1993.

33-16-1006. Repealed. Sec. 5, Ch. 114, L. 1981.

History: En. Sec. 17, Ch. 329, L. 1969; R.C.M. 1947, 40-5617.

33-16-1007. Renumbered 33-16-1011 by Code Commissioner, 1981.

33-16-1008. Definitions. As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. As used in this subsection, two or

more insurers who have a common ownership or operate in this state under common management or control constitute a single insurer.

(3) "Classification system" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

(5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) "Experience rating" means a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer under the laws of the state.

(9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers' compensation and employer's liability insurance pursuant to the provisions of this part.

(11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses, including all assessments that are loss-based and excluding any separately stated policyholder surcharges, projected through development to their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of exposure, including loss adjustment expense.

(13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of workers' compensation and employer's liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or loss adjustment expenses.

(15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

(16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner.

History: En. Sec. 1, Ch. 186, L. 1995; amd. Sec. 2, Ch. 284, L. 1997.

33-16-1009 and 33-16-1010 reserved.

33-16-1011. Classification review committee — membership — term. (1) There is a classification review committee.

(2) The committee is composed of five voting members, consisting of:

(a) two representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance producer who resides in Montana, appointed by the commissioner of insurance;

(c) one representative of the state compensation insurance fund who is an employee of the state fund and who is appointed by the executive director of the state fund; and

(d) one representative of an employer who is insured by either a private insurance carrier or the state compensation insurance fund, appointed by the commissioner of insurance.

(3) Each member shall hold office for a period of 3 years. An appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a), (2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance producers, and employers may submit names of individuals they recommend for appointments. The commissioner of insurance shall consider the names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee must be staffed by the advisory organization designated under 33-16-1023 and be funded by the advisory organization. Committee members may, if they request, be paid their actual and necessary travel expenses.

(6) Documents and other information concerning the committee's actions must be made available for public review in the office of the commissioner of insurance.

History: En. Sec. 18, Ch. 329, L. 1969; amd. Sec. 6, Ch. 558, L. 1977; R.C.M. 1947, 40-5618; amd. Sec. 1, Ch. 114, L. 1981; MCA 1979, 33-16-1007; redes. 33-16-1011 by Code Commissioner, 1981; amd. Sec. 54, Ch. 613, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 1, Ch. 528, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 22, Ch. 186, L. 1995; amd. Sec. 2, Ch. 290, L. 1995.

33-16-1012. Functions and powers of classification review committee — hearings — rulemaking. (1) The classification review committee shall:

(a) meet not less than semiannually to conduct its business;

(b) make the final determination regarding the establishment or revision of all classifications in accordance with the procedures set forth in Title 2, chapter 4, part 3;

(c) publish material and pamphlets as it considers appropriate;

(d) act as a review committee concerning objections filed by a policyholder or insurer in relation to classifications assigned to a policyholder according to rules governing the issuance or application of classifications; and

(e) make rules as may be necessary for the conduct of any business that is subject to notice and hearings. The rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be published in the Administrative Rules of Montana as part of the rules promulgated by the commissioner of insurance.

(2) (a) The initial hearing conducted by the committee pursuant to subsection (1)(d) must be informal and nonbinding upon the parties and must be conducted pursuant to rules of procedure that the committee considers to be appropriate. The committee shall issue its written advisory decision within 30 days of the conclusion of the hearing and send a written copy of the decision by first-class mail, postage prepaid, to each party. Each party to the informal hearing shall notify the committee and each other party of the notifying party's intent to be bound or not bound by the committee's advisory decision, and the notice must be made within 30 days of the date the committee mails the written copy of the decision to the parties.

(b) A party who is aggrieved by the advisory decision of the committee, or by the refusal of a party to be bound by the committee's advisory decision rendered after a hearing conducted pursuant to subsection (2)(a) may, within 30 days after the expiration of the 30-day notice deadline specified in subsection (2)(a), initiate an informal contested case proceeding pursuant to 2-4-604 before the committee, and the committee shall hear the matter in a de novo administrative proceeding as provided in Title 2, chapter 4, part 6. The committee may, in its discretion or at the request of any party, appoint a hearings examiner. If a hearings examiner is appointed, the examiner shall take evidence and prepare proposed findings of fact and conclusions of law that the committee may accept, reject, or modify, in whole or in part, based on the evidence produced during the informal contested case proceeding.

(c) A party who is aggrieved by a decision of the committee rendered after a hearing conducted pursuant to subsection (2)(b) may petition the workers' compensation court for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

(3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2.

History: En. Sec. 2, Ch. 114, L. 1981; amd. Sec. 2, Ch. 528, L. 1993; amd. Sec. 23, Ch. 186, L. 1995; amd. Sec. 3, Ch. 290, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-16-1013 through 33-16-1019 reserved.

33-16-1020. Competitive market — hearing. (1) A competitive market is presumed to exist unless the commissioner, after hearing, issues an order stating that a reasonable degree of competition does not exist in the market. The order may not expire later than 1 year after issuance.

(2) In determining whether a reasonable degree of competition exists, the commissioner shall consider the following factors:

(a) the number of insurers actively engaged in providing coverage;

(b) market shares and changes in market shares;

(c) ease of entry into the market;

(d) market concentration among plan No. 2 insurers as measured by the Herfindahl-Hirschman index;

(e) whether long-term profitability for insurers in the market is unreasonably high in relation to the risks being insured;

(f) whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risks; and

(g) generally accepted and relevant tests relating to competitive market structure, market performance, and market conduct.

(3) The workers' compensation insurance market may not be determined to be noncompetitive if the market concentration of the 50 largest insurers writing workers' compensation insurance under plan No. 2 satisfied the U.S. department of justice merger guidelines for an unconcentrated market.

(4) The commissioner's determinations must be made on the basis of findings of fact and conclusions of law.

History: En. Sec. 2, Ch. 186, L. 1995.

33-16-1021. Ratemaking standards — review by commissioner. (1) Rates may not be excessive, inadequate, or unfairly discriminatory.

(2) Rates in a competitive market are not excessive. Rates in a noncompetitive market are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services rendered.

(3) A rate may not be determined to be inadequate unless:

(a) it is clearly insufficient to sustain projected losses and expenses;

(b) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will tend to create a monopoly in the market; or

(c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not produced when prospective loss costs are applied to anticipated payrolls.

(4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with different loss exposures or expense levels.

(5) In determining whether rates comply with standards under subsection (1), consideration must be given to:

(a) past and prospective loss experience within and outside Montana, in accordance with accepted actuarial principles;

(b) catastrophe hazards and contingencies;

(c) past and prospective expenses within and outside Montana;

(d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) a reasonable margin for underwriting profit; and

(f) all other relevant factors within and outside Montana.

(6) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of any other insurer or group of

insurers to reflect the requirements of the operating methods of the insurer or group of insurers.

(7) The rate may contain provisions of contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of a profit, consideration must be given to all investment income attributable to premiums and the reserves associated with those premiums.

(8) The commissioner may investigate and determine whether rates in Montana are excessive, inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also consider the factors specified in 33-16-1020.

History: En. Sec. 3, Ch. 186, L. 1995; amd. Sec. 29, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (3)(a) at end deleted "and"; and in (6) at end after "group" inserted "of". Amendment effective October 1, 1999.

33-16-1022. Dividends — regulation or prohibition. (1) An advisory organization may not adopt a rule that would regulate or prohibit the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(2) A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers is not a rating plan or system. A plan for the payment of dividends, savings, or unabsorbed premium deposits does not relieve an insurer from complying with any requirement of this chapter regarding rating plans or systems.

(3) It is an unfair trade practice under 33-18-1003 to make the payment of a dividend or any portion of it conditioned upon renewal of the policy or contract.

History: En. Sec. 4, Ch. 186, L. 1995; amd. Sec. 30, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (2) inserted second sentence providing that a payment plan does not relieve the insurer from statutory compliance. Amendment effective October 1, 1999.

33-16-1023. Membership in advisory organization. (1) The commissioner shall designate one workers' compensation advisory organization to assist the commissioner in gathering, compiling, and reporting relevant statistical information. Each workers' compensation insurer shall record and report its workers' compensation experience to the designated advisory organization as set forth in the uniform statistical plan approved by the commissioner.

(2) Each workers' compensation insurer must be a member or subscriber of the designated workers' compensation advisory organization. Each workers' compensation insurer may adhere to the policy forms filed by the advisory organization.

(3) Each workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan that has been filed by the designated advisory organization with the commissioner and approved by the commissioner.

(4) Each workers' compensation insurer shall use the forms and adhere to the rules that the designated advisory organization shall develop and file with the commissioner. The forms and rules must be reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, the uniform experience rating plan, and the uniform classification system.

(5) The methodology of the experience rating plan required under subsection (3) must be based on:

(a) reasonable eligibility standards;

(b) incentives for loss prevention; and

(c) a premium differential to encourage safety.

(6) The designated advisory organization or an insurer may file rating plans with the commissioner that provide for prospective or retrospective premium adjustment based on an insured's expected or actual loss experience, including but not limited to scheduled rating adjustments, retrospective rating plans, optional deductible plans under 39-71-435, a construction industry premium credit plan under 39-71-2211, or other plans as authorized by statute or approved by the commissioner.

History: En. Sec. 5, Ch. 186, L. 1995.

33-16-1024. Plan No. 3 membership in licensed workers' compensation advisory organization — reporting requirements. (1) The plan No. 3 insurer under Title 39, chapter 71, part 23, is required to be a member of a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4.

(2) If the plan No. 3 insurer is not a member of the workers' compensation advisory organization designated under 33-16-1023, then, subject to the deviations from the uniform statistical plan, uniform classification system, and uniform experience rating plan that may be approved by the board of directors of the plan No. 3 insurer as provided in 39-71-2316, the insurer shall:

(a) record and report its workers' compensation experience to the designated advisory organization as required in the uniform statistical plan of the designated workers' compensation advisory organization approved by the commissioner, the uniform classification system, and the uniform experience rating plan that have been filed by the designated advisory organization with and approved by the commissioner; and

(b) use the forms and adhere to the rules that the designated advisory organization develops and files with the commissioner under 33-16-1023.

History: En. Sec. 6, Ch. 186, L. 1995; amd. Sec. 5, Ch. 276, L. 1997.

33-16-1025. Interchange of rating plan — data exchange — cooperative action in ratemaking — violation of part. (1) Reasonable rules and plans may be adopted by the commissioner for the interchange of data necessary for the application of rating plans.

(2) To ensure conformity in administering rate regulatory laws, the commissioner, each insurer, and the advisory organization designated by the commissioner may exchange information and experience data with insurance regulatory officials, insurers, and advisory organizations in other states and may consult with them with respect to ratemaking and the application of rating systems.

(3) Cooperation among advisory organizations or among insurers and advisory organizations in ratemaking or in other matters within the scope of this part is authorized, but the filings resulting from the cooperation are subject to all provisions of this part.

(4) The commissioner may review the cooperative activities and practices. If, after hearing, any cooperative activity or practice is found to violate the provisions of this part, a written order may be issued specifying that the activity or practice violates the provision of this part and requiring the discontinuance of the activity or practice.

History: En. Sec. 7, Ch. 186, L. 1995.

33-16-1026 . Rate filings. (1) A workers' compensation advisory organization shall file with the commissioner:

(a) workers' compensation rates and rating plans that are limited to prospective loss costs;

(b) each workers' compensation policy form to be used by its members or subscribers;

(c) the uniform classification plan and rules of the advisory organization;

(d) the uniform experience rating plan and rules of the advisory organization; and

(e) any other information that the commissioner requests and is entitled to receive under this part.

(2) Each insurer shall file with the commissioner all rates, supplementary rate information, and any changes and amendments made by it for use in this state as required by the commissioner under 33-16-1027(2).

(3) An insurer may establish rates and supplementary rate information based upon the factors in 33-16-1021. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed by the advisory organization designated under 33-16-1023 or the rates and supplementary rate information filed by another insurer.

(4) An insurer may not make or issue a contract or policy of insurance under this part, except in accordance with the filings that are in effect for the insurer as provided in this part.

(5) In addition to other prohibitions in this part, an advisory organization may not file rates, supplementary rate information, or supporting information on behalf of an insurer.

(6) If each rate in a schedule of workers' compensation rates for specific classifications of risks filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers' compensation rates for those classifications filed by the designated advisory organization under subsection (1), the schedule of rates filed by the insurer is not subject to 33-16-1027(1) but becomes effective upon filing.

History: En. Sec. 8, Ch. 186, L. 1995; amd. Sec. 146, Ch. 42, L. 1997.

33-16-1027. Rate filing review. (1) The commissioner shall review each insurance filing to ensure compliance with the following guidelines:

(a) The effective date of each workers' compensation insurer or advisory organization filing must be the date specified in the filing. The effective date of the filing may not be earlier than 30 days after the date on which the filing is received by the commissioner or the date of receipt of the information furnished in support of the filing, if the supporting information is required by the commissioner.

(b) Upon written application of the insurer or advisory organization, the commissioner may authorize a filing that becomes effective before the expiration of the period described in subsection (1)(a).

(c) A filing is considered to have met the requirements of this part unless disapproved by the commissioner within the period described in subsection (1)(a) or any extension of the period.

(2) Whenever a filing is not accompanied by the information required under this section, the commissioner shall inform the filer of the deficiency within 30 days of the initial filing. The filing is considered made when the required information is furnished or when the filer certifies to the commissioner that the additional

information requested by the commissioner is not maintained or cannot be provided.

History: En. Sec. 9, Ch. 186, L. 1995; amd. Sec. 23, Ch. 531, L. 1997.

33-16-1028. Improper rates — hearing. (1) If the commissioner finds that a rate is not in compliance with 33-16-1021 or that a rate has been set in violation of 33-16-1032, the commissioner shall order that its use be discontinued for any policy issued or renewed after the date of the order, and the order may prospectively provide for premium adjustment of any policy then in force.

(2) The order must be issued within 30 days after the close of a hearing, if one is requested by the insurer, or within a reasonable time fixed by the commissioner. The order expires 1 year after its effective date unless rescinded earlier by the commissioner.

(3) If the commissioner disapproves a rate under subsection (1), disapproval must take effect not less than 15 days after the commissioner's order and the last previous rate in effect for the insurer must be reimposed for a period of 1 year unless the commissioner approves a rate under the provisions of subsection (5) or (6).

(4) A determination made by the commissioner under this section must be in accordance with accepted actuarial standards on the basis of findings of fact and conclusions of law.

(5) For a period of 1 year after the effective date of a disapproval order under subsection (1), a rate adopted to replace one disapproved under the order may not be used until it has been filed with the commissioner and approved within 30 days.

(6) Whenever an insurer does not have legally effective rates pursuant to subsection (1), the commissioner shall, on the insurer's request, specify interim rates for the insurer that are adequate to protect the interests of all parties. The commissioner may order that a specified portion of the premiums be placed in a special reserve established by the insurer. When new rates become legally effective, the commissioner shall order the reserved funds or any overcharge in the interim rates to be distributed appropriately, except that minimal adjustments may not be required.

History: En. Sec. 10, Ch. 186, L. 1995.

33-16-1029. Restrictions on certain insurers — waiting period. (1) The commissioner may require that a particular insurer file any of its rates and supplementary rate information 30 days prior to the effective date of the rates, if the commissioner finds after a hearing that the protection of the interests of the insurer's insureds and the public in this state requires closer supervision of the insurer's rates.

(2) Upon written application by an insurer, the commissioner, following review, may authorize a filing, which is effective before the expiration of the period described in subsection (1).

(3) The filing must be approved or disapproved during the waiting period and, if not disapproved before the expiration of the waiting period, is considered to have met the requirements of this section.

(4) An insurer aggrieved by the commissioner's actions under this section may request a rehearing by the commissioner after the expiration of 12 months from the date of the commissioner's initial order.

History: En. Sec. 11, Ch. 186, L. 1995.

33-16-1030. Delay of rates in noncompetitive market. (1) A 30-day waiting period may be implemented or extended under one of the following circumstances:

(a) after finding that the market is not competitive under 33-16-1020, the commissioner adopts a rule requiring that any subsequent changes in rates or supplementary information must be filed with the commissioner at least 30 days before the changes become effective;

(b) the commissioner extends the waiting period under this section for a period not exceeding 30 additional days by written notice to the filer before the first 30-day period expires;

(c) upon written application by an insurer or advisory organization, the commissioner, following review, authorizes a filing, which becomes effective before the expiration of the period described in subsection (1)(a) or (1)(b); or

(d) the filing is approved or disapproved during the waiting period and, if not disapproved before the expiration of the waiting period, is considered to have met the requirements of this section.

(2) If a rule is adopted under subsection (1), the commissioner may require the filing of supporting data as to classes of risks or combinations of risk classes that the commissioner considers necessary for the proper functioning of the rate monitoring and regulating process. The supporting data must include:

(a) the experience and judgment of the filer and, to the extent that the filer wishes or the commissioner requires, the experience and judgment of other insurers or the advisory organization designated under 33-16-1023;

(b) the interpretation of any statistical data upon which the filer relied;

(c) a description of the actuarial and statistical methods used in setting the rate; and

(d) any other relevant matter required by the commissioner.

(3) A rule adopted under this section expires 1 year after adoption unless renewed by the commissioner after hearings and appropriate findings under this section.

(4) Whenever a filing is not accompanied by the information that the commissioner has required under subsection (2), the commissioner shall inform the insurer within 10 days of the initial filing. The filing is considered made when the required information is furnished.

History: En. Sec. 12, Ch. 186, L. 1995.

33-16-1031. Consent to rate. Notwithstanding any other provision of this part, upon the written consent of the insured, filed with the commissioner, a rate in excess of that determined in accordance with the other provisions of this part may be used on any specific risk.

History: En. Sec. 13, Ch. 186, L. 1995.

33-16-1032. Acts reducing competition prohibited. (1) In this section, the word "insurer" includes two or more affiliated insurers engaged in joint or cooperative underwriting, investment management, marketing, servicing, or administration of their business and affairs as insurers and:

(a) under common management; or

(b) under common controlling ownership or under other common effective legal control.

(2) An insurer or advisory organization may not:

(a) monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize the business of insurance of any kind, subdivision, or class;

(b) agree with any other insurer or advisory organization to charge or adhere to any rate or rating plan other than the uniform experience rating plan or rating rules of the advisory organization, except as needed to comply with the requirements of 33-16-1026;

(c) make an agreement with any other insurer, advisory organization, or other person to unreasonably restrain trade or substantially lessen competition in the business of insurance of any kind, subdivision, or class; or

(d) make an agreement with any other insurer or advisory organization to refuse to deal with any person in connection with the sale of insurance.

(3) The fact that two or more insurers, whether they are members or subscribers of a common advisory organization, use consistently or intermittently the same advisory organization rules or insurer guidelines, rating plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules, surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.

(4) An advisory organization or member or subscriber of an advisory organization may not interfere with the right of any insurer to establish its rates independently of that advisory organization or to charge rates different from the rates made by that advisory organization.

(5) Except as required by 33-16-1026, an advisory organization may not have or adopt any rule or exact any agreement or formulate or engage in any program that would require any member, subscriber, or other insurer to:

(a) adhere to its rates; or

(b) prevent any insurer from acting independently.

History: En. Sec. 14, Ch. 186, L. 1995.

33-16-1033. Advisory organization — permitted activity. An advisory organization may:

(1) develop statistical plans, including class definitions;

(2) collect statistical data from members, subscribers, or any other source;

(3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit insurers to modify pure premiums based upon their own rating methods or interpretations of underlying data.

(4) prepare and distribute manuals for rating rules and rating schedules that do not contain any rules or schedules, including final rates, without information outside the manuals;

(5) distribute information that is filed with the commissioner and open to public inspection;

(6) conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses;

(7) prepare and file policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;

(8) collect, compile, and distribute past and current prices of individual insurers, if the information is made available to the general public;

(9) conduct research and collect information to determine the impact of benefit level changes on pure premium rates;

(10) prepare and distribute rules and rating values for the uniform experience rating plan; and

(11) calculate and disseminate individual risk premium modification factors. Individual risk premium modification factors may only be disseminated to:

(a) a licensed producer or a plan No. 2 or plan No. 3 insurer for the business of insurance only; and

(b) the department of labor and industry for regulatory purposes only. Individual employer payroll and loss information may be provided to a person other than the current licensed producer or a plan No. 2 or plan No. 3 insurer only after obtaining the employer's written permission.

History: En. Sec. 15, Ch. 186, L. 1995.

33-16-1034. Advisory organization — prohibited activity. In addition to other prohibitions in this part, except as specifically permitted under 33-16-1033, an advisory organization may not compile or distribute recommendations relating to rates that include expenses, other than loss adjustment expenses, or profit.

History: En. Sec. 16, Ch. 186, L. 1995.

33-16-1035. Penalties — suspension of license. (1) The commissioner may impose upon a person or organization that violates 33-16-1020 through 33-16-1036 a penalty of not more than $500 for each violation.

(2) If the commissioner determines that the violation is willful, the commissioner may impose a penalty of not more than $1,000 for each violation in addition to any other penalty provided by law.

(3) The commissioner may suspend the license of an insurer or an advisory organization that fails to comply with any order within the time set by the order or extension granted by the commissioner. The commissioner may not suspend a license for failure to comply with an order until the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may determine the period of a suspension, which remains in effect for the period unless modified or rescinded or until the order upon which the suspension is based is modified, rescinded, or reversed.

(4) Unless a consent decree has been entered, a penalty may not be imposed nor may a license be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings of fact. The hearing must be held at least 10 days after written notice to the person or organization specifying the alleged violation.

(5) A party aggrieved by an order or decision of the commissioner may, within 30 days after receiving the commissioner's notice, make a written request for a hearing.

History: En. Sec. 17, Ch. 186, L. 1995; amd. Sec. 147, Ch. 42, L. 1997.

33-16-1036. Appeals from commissioner. (1) An order, decision, or act of the commissioner under this part may be appealed to district court upon petition of a person aggrieved.

(2) A petition for review must be filed within 60 days from notice of the order, decision, or act. The commencement of the proceeding does not affect enforcement or validity of the commissioner's action unless the court determines, after notice to the commissioner, that a stay of enforcement until further direction of the court will not injure the interests of the public.

History: En. Sec. 18, Ch. 186, L. 1995.

CHAPTER 17

INSURANCE PRODUCERS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS

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Agency generally, Title 28, ch. 10.

Part 1

General Provisions

33-17-101. Scope of chapter. (1) The purpose of this chapter is to govern the qualifications and procedures for licensing insurance producers.

(2) This chapter applies to all stock, mutual, and reciprocal insurers and to all kinds of insurance and annuities.

History: En. Sec. 145, Ch. 286, L. 1959; R.C.M. 1947, 40-3301; amd. Sec. 17, Ch. 713, L. 1989.

33-17-102. Definitions. As used in this title, the following definitions apply:

(1) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term does not include a:

(a) licensed attorney who is qualified to practice law in this state;

(b) salaried employee of an insurer or of a managing general agent;

(c) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

(d) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not mean:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(6) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of the person or the person's spouse, employer, or business.

(8) "Individual" means a private or natural person, as distinguished from a partnership, corporation, or association.

(9) "Insurance producer", except as provided in 33-17-103:

(a) means:

(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

(A) policies of insurance for risks residing, located, or to be performed in this state; or

(B) membership contracts as defined in 33-30-101;

(ii) a managing general agent. For purposes of this chapter, the term "managing general agent" has the same meaning as set forth in 33-2-1501.

(b) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried employee of an insurance producer who assists and is responsible to the insurance producer.

(10) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(11) "Person" means an individual, partnership, corporation, association, or other legal entity.

(12) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

History: En. Secs. 146, 147, 148, 150, Ch. 286, L. 1959; R.C.M. 1947, 40-3302, 40-3303(part), 40-3304, 40-3306; amd. Sec. 5, Ch. 518, L. 1983; amd. Sec. 1, Ch. 409, L. 1987; amd. Sec. 18, Ch. 713, L. 1989; amd. Sec. 25, Ch. 798, L. 1991; amd. Sec. 49, Ch. 379, L. 1995; amd. Sec. 24, Ch. 531, L. 1997.

33-17-103. Exemptions from definition of insurance producer. The definition of insurance producer contained in 33-17-102 does not include:

(1) a person who is a regularly salaried officer or employee of an insurer and who is engaged in the performance of usual and customary executive, administrative, or clerical duties and whose duties do not include the negotiation or solicitation of insurance;

(2) a person who is a salaried employee in the office of an insurance producer and who devotes his full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of his employer, if the employee does not receive any commissions on the applications and his compensation is not varied by the volume of applications or premiums he takes or receives;

(3) a person who secures and furnishes information for the purpose of group life insurance, annuities, group or blanket accident and disability insurance or for the purpose of enrolling individuals under such plans, issuing certificates under such plans, or otherwise assisting in administering such plans, if no commission is paid for the service;

(4) an employer, his officers, or employees or the trustees of an employee trust plan, to the extent that the employer, officers, employees, or trustees are engaged

in the administration of operation of a program of employee benefits for their own employees or the employees of their subsidiaries or affiliates if the program involves the use of insurance issued by an insurer and the employer, officers, employees, or trustees are not compensated in any manner, directly or indirectly, by the insurer issuing the contracts; or

(5) a person who is:

(a) an employee of an insurer or of an organization employed by an insurer, which insurer or organization is engaged in the inspection, rating, or classification of insurance risks or in the supervision of the training of insurance producers; and

(b) not individually engaged in the solicitation or negotiation of insurance policies and contracts.

History: En. Sec. 149, Ch. 286, L. 1959; R.C.M. 1947, 40-3305; amd. Sec. 6, Ch. 518, L. 1983; amd. Sec. 19, Ch. 713, L. 1989.

Cross-References

Farm mutual insurers — license not required, 33-4-312.

Officers of fraternal benefit societies — license not required, 33-6-403.

Fraternal benefit societies — special license provisions, 33-7-525.

Reciprocal insurer — attorney-in-fact, 33-17-103.

Part 2

Licensing and Appointment of Insurance Producers

Part Cross-References

Hearings on decisions of Commissioner, 33-1-701.

Former criminal offenders — consideration in licensing, 37-1-203.

Licenses — discrimination in issuance prohibited, 49-3-204.

33-17-201. License required of insurance producer — forms. (1) A person may not in this state act as or hold himself out to be an insurance producer for subjects of insurance located, residing, or to be performed in this state unless licensed as an insurance producer under this chapter.

(2) The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, or termination of a license.

(3) Unless licensed as a life insurance producer as required by this section, a person may not in this state solicit life insurance or annuities or procure applications for life insurance or annuities or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to insurance or annuities for fee, commission, or other compensation, other than as a salaried full-time employee counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of the employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of the employees.

(4) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.

(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:

(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated; or

(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of $50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote, 50% of his time to the solicitation or procurement of insurance contracts for the fraternal benefit society.

(6) The commissioner may not grant or extend a license to a person if the license is being or will be used to write controlled business. The commissioner shall consider a license to have been, or intended to be, used for the purpose of writing controlled business if, during any 12-month period, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee.

History: En. Secs. 147, 151, Ch. 286, L. 1959; R.C.M. 1947, 40-3303(part), 40-3307; amd. Sec. 7, Ch. 518, L. 1983; amd. Sec. 17, Ch. 11, Sp. L. March 1986; amd. Sec. 2, Ch. 409, L. 1987; amd. Sec. 2, Ch. 480, L. 1987; amd. Sec. 12, Ch. 285, L. 1989; amd. Sec. 20, Ch. 713, L. 1989; (6)En. Sec. 4, Ch. 713, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Penalty provision — Montana Insurance Code, 33-1-104.

33-17-202. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 152, Ch. 286, L. 1959; amd. Sec. 7, Ch. 44, L. 1969; amd. Sec. 5, Ch. 423, L. 1971; R.C.M. 1947, 40-3308; amd. Sec. 3, Ch. 409, L. 1987; amd. Sec. 13, Ch. 285, L. 1989; amd. Sec. 6, Ch. 509, L. 1989.

33-17-203. Repealed. Sec. 19, Ch. 409, L. 1987.

History: En. Sec. 153, Ch. 286, L. 1959; amd. Sec. 8, Ch. 44, L. 1969; R.C.M. 1947, 40-3309; amd. Sec. 19, Ch. 198, L. 1979; amd. Sec. 1, Ch. 400, L. 1983.

33-17-204. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 154, Ch. 286, L. 1959; amd. Sec. 9, Ch. 44, L. 1969; R.C.M. 1947, 40-3310; amd. Sec. 1, Ch. 345, L. 1979; amd. Sec. 4, Ch. 409, L. 1987.

33-17-205. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 155, Ch. 286, L. 1959; amd. Sec. 10, Ch. 44, L. 1969; R.C.M. 1947, 40-3311.

33-17-206. Repealed. Sec. 36, Ch. 451, L. 1993.

History: En. Sec. 165, Ch. 286, L. 1959; amd. Sec. 12, Ch. 44, L. 1969; R.C.M. 1947, 40-3321; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 35, Ch. 798, L. 1991.

33-17-207. Repealed. Sec. 4, Ch. 98, L. 1995.

History: En. Sec. 1, Ch. 509, L. 1989; amd. Sec. 1, Ch. 713, L. 1989.

33-17-208. Repealed. Sec. 4, Ch. 98, L. 1995.

History: En. Sec. 2, Ch. 509, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 36, Ch. 16, L. 1991; amd. Sec. 7, Ch. 798, L. 1991.

33-17-209. Repealed. Sec. 4, Ch. 98, L. 1995.

History: En. Sec. 3, Ch. 509, L. 1989; amd. Sec. 1, Ch. 713, L. 1989.

33-17-210 reserved.

33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code which govern the applicant's operations as an insurance producer; and

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or authorization under 35-1-1312 or filed articles of incorporation under 35-1-220.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708(1)(a). The commissioner may, after a hearing with notice to the association, revoke the license if the

commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(4) An insurance producer using an assumed business name shall register the name with the commissioner before using it.

History: En. Sec. 156, Ch. 286, L. 1959; amd. Sec. 19, Ch. 535, L. 1975; R.C.M. 1947, 40-3312; amd. Sec. 20, Ch. 198, L. 1979; amd. Sec. 2, Ch. 345, L. 1979; amd. Sec. 82, Ch. 370, L. 1987; amd. Sec. 5, Ch. 409, L. 1987; amd. Sec. 7, Ch. 509, L. 1989; amd. Sec. 21, Ch. 713, L. 1989; amd. Sec. 210, Ch. 368, L. 1991; amd. Sec. 170, Ch. 411, L. 1991; amd. Sec. 50, Ch. 379, L. 1995; amd. Sec. 8, Ch. 316, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 316 in (3) at end of fourth sentence after "33-3-708" substituted "(1)(a)" for "for the license of an insurance producer". Amendment effective January 1, 2000.

33-17-212. Examination required — exceptions — fees. (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) If the applicant is a partnership or corporation, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall meet the qualifications as provided in this section.

(5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. For the purposes of this provision, property insurance includes marine insurance.

(d) casualty insurance;

(e) surety insurance;

(f) credit life and disability insurance;

(g) title insurance.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or refused to continue the previous license, except that this subsection (6)(b) does not apply to a title insurance producer, as defined in 33-25-105;

(c) an applicant for a license as a nonresident insurance producer;

(d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that the applicant is qualified to sell the insurance;

(e) transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;

(f) an association applying for a license under 33-17-211;

(g) a mechanical breakdown insurance producer;

(h) a prepaid legal plans producer;

(i) a gap insurance producer;

(j) involuntary unemployment insurance producer; or

(k) an individual who, within 60 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.

History: En. Sec. 157, Ch. 286, L. 1959; amd. Sec. 11, Ch. 44, L. 1969; R.C.M. 1947, 40-3313; amd. Sec. 3, Ch. 345, L. 1979; amd. Sec. 1, Ch. 211, L. 1981; amd. Sec. 18, Ch. 519, L. 1985; amd. Sec. 6, Ch. 409, L. 1987; amd. Sec. 1, Ch. 480, L. 1987; amd. Sec. 22, Ch. 713, L. 1989; amd. Sec. 25, Ch. 531, L. 1997; amd. Sec. 9, Ch. 316, L. 1999; amd. Sec. 31, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 316 in (2) at end of first sentence deleted "and collecting the fees required by 33-2-708"; deleted former (3) that read: "(3) Each individual applying for an examination shall remit the fees required by 33-2-708"; in (3) after "remit all" deleted "required fees and"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 472 in (4) at end substituted "meet the qualifications as provided in this section" for "take the examination"; deleted former (7)(h) that read: "(h) a service contract insurance producer"; inserted (6)(h) regarding a prepaid legal plans producer; inserted (6)(i) regarding a gap insurance producer; inserted (6)(j) regarding an involuntary unemployment insurance producer; and made minor changes in style. Amendment effective April 27, 1999.

Cross-References

Types of insurance — definitions, 33-1-205 through 33-1-212.

Licensing reciprocity, 33-17-401.

Montana Title Insurance Act, Title 33, ch. 25.

33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at places in this state reasonably accessible to the applicants.

(2) The commissioner shall assure that the examinations are conducted in a fair and impartial manner and without unfair discrimination as between individuals examined.

(3) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

(4) The examination of a title insurance producer, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions.

History: **En. Sec. 158, Ch. 286, L. 1959; amd. Sec. 1, Ch. 156, L. 1969; R.C.M. 1947, 40-3314; amd. Sec. 21, Ch. 198, L. 1979; amd. Sec. 19, Ch. 519, L. 1985; amd. Sec. 7, Ch. 409, L. 1987; amd. Sec. 23, Ch. 713, L. 1989.**

33-17-214. Issuance of license — contents — lapse of license — change of address. (1) The commissioner shall promptly issue a license to a person pursuant to 33-17-211 and 33-17-212.

(2) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information as the commissioner considers necessary.

(3) The license of a partnership, corporation, or association must also state the name of each individual authorized to exercise the license powers.

(4) Each license remains in effect, unless suspended or revoked.

(5) A person shall inform the commissioner in writing of a change of address within 30 days of the change.

History: **En. Sec. 159, Ch. 286, L. 1959; R.C.M. 1947, 40-3315; amd. Sec. 4, Ch. 345, L. 1979; amd. Sec. 24, Ch. 713, L. 1989; amd. Sec. 10, Ch. 316, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 316 in (4) at end deleted "as long as the fees required by 33-2-708 are paid"; deleted former (5) that read: "(5) An individual who allows his license to lapse may, within 12 months from the due date of the unpaid annual fee, apply for the same license without having to pass a written examination if he pays a penalty in the amount of twice the unpaid annual fee"; and made minor changes in style. Amendment effective January 1, 2000.

33-17-215. Repealed. Sec. 14, Ch. 345, L. 1979.

History: **En. Sec. 160, Ch. 286, L. 1959; R.C.M. 1947, 40-3316.**

33-17-216. Temporary insurance producer license. (1) The commissioner may issue a temporary license to or with respect to an individual qualified for the temporary license only as to age, residence, and trustworthiness and without requiring the individual to take an examination, in the following cases:

(a) to the surviving spouse or next of kin or to the administrator or executor, or the employee of the administrator or executor, of a licensed insurance producer upon the insurance producer's death;

(b) to the spouse, next of kin, employee, or legal guardian of a licensed insurance producer disabled by injury or physical or mental illness;

(c) to an employee of a partnership, or officer or employee of a corporation, licensed as an insurance producer, upon the death or disability of an individual designated in the license to exercise the powers of an insurance producer;

(d) to the designee of a licensed insurance producer entering upon active service in the armed forces of the United States of America;

(e) in any other circumstance in which the commissioner finds that the public interest will best be served by issuing a temporary license.

(2) The temporary license must be issued upon application filed with the commissioner in the form and containing the information as the commissioner may reasonably require.

(3) The temporary license must be for a period of not over 90 days, subject to extension at the commissioner's discretion for an additional period of not more than 90 days, except that a temporary license issued pursuant to subsection (1)(a) may be continued until the executor or administrator disposes of the insurance business, but not to exceed a period of 15 months. A temporary license issued to the next of kin under subsection (1)(a) may not be extended for an additional term after the appointment and qualification of the administrator or executor.

History: **En. Sec. 163, Ch. 286, L. 1959; R.C.M. 1947, 40-3319; amd. Sec. 27, Ch. 198, L. 1979; amd. Sec. 5, Ch. 345, L. 1979; amd. Sec. 25, Ch. 713, L. 1989; amd. Sec. 11, Ch. 316, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 316 in (2) at end deleted "and upon payment of the applicable fee as provided in 33-2-708"; in (3) near middle of first sentence after "continued" deleted "without payment of an additional fee"; deleted former (4) that read: "(4) The fee paid for the temporary license may be applied upon the fee required for a permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance"; and made minor changes in style. Amendment effective January 1, 2000.

33-17-217. Limitations and rights under temporary license. (1) The commissioner may not issue more than one temporary license, to or with respect to the same individual to be licensed, within any 12-month period.

(2) The temporary license may cover the same kinds of insurance for which the insurance producer being replaced was licensed.

(3) As to a temporary insurance producer's license issued on account of the death or disability of an insurance producer, the licensee may represent all of the insurers last represented by the deceased or disabled insurance producer, but the licensee may not be licensed for an additional kind of insurance under the temporary license.

(4) A temporary licensee has the same license powers and duties as under a permanent license.

History: En. Sec. 164, Ch. 286, L. 1959; R.C.M. 1947, 40-3320; amd. Sec. 26, Ch. 713, L. 1989.

33-17-218. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 172, Ch. 286, L. 1959; amd. Sec. 13, Ch. 44, L. 1969; R.C.M. 1947, 40-3328; amd. Sec. 2, Ch. 344, L. 1979; amd. Sec. 6, Ch. 345, L. 1979.

33-17-219 and 33-17-220 reserved.

33-17-221. Licensing insurance vending machines. (1) A licensed resident insurance producer may solicit applications for and issue policies of personal travel accident insurance by means of mechanical vending machines supervised by the insurance producer and placed at airports, railroad stations, bus stations, and similar places where transportation tickets are sold and of convenience to the traveling public, if the commissioner finds that:

(a) the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through a mechanical vending machine, and use of a mechanical vending machine to sell or issue a policy in a particular proposed location would be of material convenience to the public;

(b) the type of mechanical vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) reasonable means are provided for informing the prospective purchaser of any policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in a defective mechanical vending machine and for which no insurance or a less amount than that paid for is actually received.

(2) The commissioner shall issue to the insurance producer a special mechanical vending machine license for each mechanical vending machine to be used to sell or issue a policy. The license must specify the name and address of the insurer and insurance producer, the name of the policy to be sold or issued through the mechanical vending machine, the serial number of the mechanical vending machine, and the place where the machine will operate. The license is subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the insurance producer. The commissioner shall also revoke the license of a mechanical vending machine if the commissioner finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. Proof of the existence of a subsisting license must be displayed on or about each

mechanical vending machine in use in the manner that the commissioner may reasonably require.

History: **En. Sec. 166, Ch. 286, L. 1959; R.C.M. 1947, 40-3322; amd. Sec. 27, Ch. 713, L. 1989; amd. Sec. 12, Ch. 316, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 316 in (2) deleted former fifth sentence that read: "The license fee is as provided in 33-2-708 for each license year or part of the year for each respective mechanical vending machine"; and made minor changes in style. Amendment effective January 1, 2000.

Cross-References

Suspension, revocation, or refusal of licenses, 33-17-1001.

33-17-222 through 33-17-230 reserved.

33-17-231. Appointment of insurance producers — continuation and termination. (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer. The appointment may be electronically filed pursuant to rules adopted by the commissioner.

(2) Each appointment remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or the insurance producer. The written notice may be electronically filed pursuant to rules adopted by the commissioner. Termination of the insurer's authority in Montana also terminates the appointment.

(3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer. The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.

(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination.

History: **En. Sec. 161, Ch. 286, L. 1959; R.C.M. 1947, 40-3317; amd. Sec. 3, Ch. 344, L. 1979; amd. Sec. 7, Ch. 345, L. 1979; amd. Sec. 8, Ch. 409, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 20, Ch. 451, L. 1993; amd. Sec. 2, Ch. 6, Sp. L. November 1993; amd. Sec. 13, Ch. 316, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 316 in (1) at end of first sentence deleted "and pay the fee as stated in 33-2-708". Amendment effective January 1, 2000.

33-17-232. Rights of insurance producer following termination of appointment. (1) Following termination of any such agency appointment as to property, casualty, or surety insurance and subject to the terms of any agreement between the insurance producer and the insurer, the insurance producer may continue to service and receive from the insurer commissions or other compensation relative to business written by him for the insurer during the existence of the appointment.

(2) This section does not apply as to insurance producers of direct writing insurers or insurance producers or insurers between whom the relationship of employer and employee exists.

History: **En. Sec. 162, Ch. 286, L. 1959; R.C.M. 1947, 40-3318; amd. Sec. 1, Ch. 713, L. 1989.**

33-17-233 through 33-17-235 reserved.

33-17-236. Appointments of insurance producers by insurers. (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use another term implying a contractual relationship with a particular insurer unless the insurance producer is an appointed insurance producer of that insurer pursuant to this section. This does not prevent an insurance producer from obtaining and presenting a quotation from an insurer with whom the producer is not appointed. If the insurer consents, the insurer may bind coverage on a risk in accordance with 33-15-411 prior to the execution of an agency contract and policy issuance.

(2) The insurer shall, not later than 15 days from the date on which the agency contract is executed with a licensed insurance producer, file with the insurance department a written notice of appointment on a form prescribed by the insurance department. The notice may be electronically filed pursuant to rules adopted by the commissioner.

(3) Upon receipt of the notice of appointment, the insurance department shall verify that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer of the determination.

(4) An appointment is effective on the earlier of the date of the executed agency contract or the date on which the insurer files the notice of appointment with the insurance department, unless the appointment is disapproved by the insurance department. A disapproved appointment is void on the date the department provides notification to the insurer.

(5) The appointment is perpetual until canceled by the insurer.

History: En. Sec. 5, Ch. 713, L. 1989; amd. Sec. 3, Ch. 6, Sp. L. November 1993; amd. Sec. 32, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) in first sentence after "particular insurer" deleted "and may not accept applications for the insurer" and substituted second and third sentences for former text that read: "The following are the appointing insurer's requirements for making appointment of a licensed insurance producer"; in (2) in first sentence after "executed" substituted "with" for "or the first insurance application is submitted by" and at end after "producer" deleted "whichever is earlier"; deleted former (1)(b) that read: "(b) If there is no executed agency contract, the insurer shall mail to the licensed insurance producer, no later than 15 days from the date the first insurance application is submitted by him, a copy of the notice of appointment form filed with the insurance department. If the licensed insurance producer does not receive the acknowledgment of appointment from the insurer within 30 days from the date the first insurance application is submitted to the insurer, the insurance producer shall immediately discontinue acting as an insurance producer on behalf of that insurer until the acknowledgment is received or the agency contract is executed"; in (3) near beginning after "verify" deleted "within 5 working days" and near end after "insurer" deleted "within 5 days"; in (4) near beginning after "effective on the" inserted "earlier of the", after "executed" inserted "agency", and after "contract" inserted "or the date on which the insurer files the notice of appointment with the insurance department, unless the appointment is disapproved by the insurance department. A disapproved appointment is void on the date the department provides notification to the insurer"; and made minor changes in style. Amendment effective October 1, 1999.

33-17-237. Notification of violation or appointment termination. (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department, which may include electronic filing.

(2) If the reason for the termination is any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall immediately notify the insurance department of the reason.

(3) Whenever an insurance company or an employee or representative of the company has reasonable cause to believe that a person has violated 33-17-1001 or

33-25-301, it is the duty of that entity, upon acquiring the knowledge, to notify the insurance department and provide the insurance department with a complete statement of all relevant facts and circumstances.

(4) The insurer, employee, or representative shall, upon request of the insurance department, provide information, documents and records, or other data pertaining to the alleged violation or termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 17, part 10.

(5) Any information, documents, records, or other data provided pursuant to this section is privileged, and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith.

History: En. Sec. 6, Ch. 713, L. 1989; amd. Sec. 21, Ch. 451, L. 1993; amd. Sec. 4, Ch. 6, Sp. L. November 1993.

Part 3
Adjusters

Part Cross-References

Hearings on decisions of Commissioner, 33-1-701.

Former criminal offenders — consideration in licensing, 37-1-203.

Private investigators — nonapplicability of provisions, 37-60-105.

Licenses — discrimination in issuance prohibited, 49-3-204.

33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster. (1) A person may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. A person shall apply for an adjuster license to the commissioner according to forms that the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state that will permit residents of Montana regularly to act as adjusters in the other state;

(c) must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make the applicant competent to fulfill the responsibilities of an adjuster;

(d) must be trustworthy and of good character and reputation; and

(e) must have and shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A partnership or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the partnership or corporation adjuster license and is qualified for an individual adjuster license.

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting partnership or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(5) An adjuster license continues in force until expired, suspended, revoked, or terminated. The license is subject to renewal upon written request to the commissioner.

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.

History: En. Sec. 171, Ch. 286, L. 1959; amd. Sec. 6, Ch. 423, L. 1971; R.C.M. 1947, 40-3327; amd. Sec. 28, Ch. 713, L. 1989; amd. Sec. 26, Ch. 531, L. 1997; amd. Sec. 14, Ch. 316, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 316 in (1) at end of third sentence deleted "upon payment of the license fee provided in 33-2-708"; in (3) deleted former second sentence that read: "An additional full license fee must be paid for each individual in excess of one named in the partnership or corporation adjuster license to exercise its powers"; in (5) at end of second sentence substituted "renewal upon written request to the commissioner" for "annual payment to the commissioner of the renewal fee required by 33-2-708, accompanied by a written request for renewal"; and made minor changes in style. Amendment effective January 1, 2000.

Part 4

Nonresident Licensees

Part Cross-References

Residence — rules for determining, 1-1-215.

Licenses — discrimination in issuance prohibited, 49-3-204.

33-17-401. Nonresident insurance producer — reciprocity. (1) A nonresident person may apply for a license if:

(a) the person meets the requirements of 33-17-211(2);

(b) the person is licensed in the state of his residence to act as insurance producer for the kind or kinds of insurance for which he applies for licensing in this state; and

(c) the person's state of residence issues a similar license to a resident of this state for the same kind or kinds of insurance for which the person is qualified in this state.

(2) The commissioner may license a nonresident individual without written examination if the insurance department in the individual's state of residence certifies that:

(a) the individual either has passed a written examination for each kind of insurance applied for or was licensed prior to the time a written examination was required in the individual's state of residence; and

(b) is currently licensed and in good standing.

(3) The commissioner may issue only a nonresident license to a person, partnership, or corporation otherwise qualified under this code but not a resident of this state.

(4) If, by the laws or rules of another state, a limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon a resident of this state who is a nonresident licensee of the other state and the limitation, conditions, or requirements are in addition to or in excess of those imposed on nonresident persons under this chapter, the same limitation, conditions, or requirements must be imposed upon the residents of the other state.

(5) If a nonresident insurance producer's state of residence suspends, revokes, or terminates his insurance license in that state, his Montana nonresident license automatically terminates and the nonresident insurance producer shall notify the commissioner that his state of residence has suspended, revoked, or terminated his insurance license in that state.

History: En. Sec. 1, Ch. 44, L. 1969; R.C.M. 1947, 40-3333; amd. Sec. 8, Ch. 345, L. 1979; amd. Sec. 9, Ch. 409, L. 1987; amd. Sec. 29, Ch. 713, L. 1989.

33-17-402. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 2, Ch. 44, L. 1969; R.C.M. 1947, 40-3334.

33-17-403. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 3, Ch. 44, L. 1969; R.C.M. 1947, 40-3335.

33-17-404. Countersigning coverage of residents. Except as provided in 33-17-1111, a nonresident insurance producer may not sign or countersign policies covering subjects of insurance residing, located, or to be performed in Montana.

History: En. Sec. 4, Ch. 44, L. 1969; R.C.M. 1947, 40-3336; amd. Sec. 9, Ch. 345, L. 1979; amd. Sec. 1, Ch. 395, L. 1983; amd. Sec. 30, Ch. 713, L. 1989.

33-17-405. Service of process — commissioner as agent. The commissioner shall act as a nonresident person's agent upon whom process in a legal proceeding against the nonresident person may be served. Service of process on the commissioner has the same legal force and validity as personal service of process upon the nonresident person. The commissioner shall, within 3 working days after receiving process, forward by certified mail, to the nonresident person's address of record, a copy of the process.

History: En. Sec. 5, Ch. 44, L. 1969; R.C.M. 1947, 40-3337; amd. Sec. 31, Ch. 713, L. 1989; amd. Sec. 51, Ch. 379, L. 1995.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

33-17-406. Nonresident insurance producer subject to insurance code. A nonresident insurance producer is subject to the provisions of the Montana Insurance Code as though a resident of this state, unless otherwise provided.

History: En. Sec. 6, Ch. 44, L. 1969; R.C.M. 1947, 40-3338; amd. Sec. 32, Ch. 713, L. 1989.

33-17-407. Nonresident insurance producer to pay taxes — annual report required. (1) A nonresident insurance producer is subject to personal income, business income, or corporate license taxes for all income earned on insurance policies issued to cover subjects or risks residing, located, or to be performed in Montana and written within the boundaries of this state.

(2) A nonresident insurance producer shall file annually a Montana income tax return as required in Title 15.

History: En. Sec. 3, Ch. 395, L. 1983; amd. Sec. 33, Ch. 713, L. 1989.

Cross-References

Premium tax imposed on policy issued through nonresident licensee, 33-2-710.

33-17-408 through 33-17-410 reserved.

33-17-411. Penalty. A nonresident insurance producer who violates a condition of his Montana license or a provision of this part is subject to a fine by the commissioner of up to $50,000 for each violation and may, at the discretion of the commissioner, have his Montana nonresident license revoked or suspended for a period of up to 5 years.

History: En. Sec. 5, Ch. 395, L. 1983; amd. Sec. 34, Ch. 713, L. 1989.

Part 5

Consultants

Part Cross-References

Hearings on decisions of Commissioner, 33-1-313.

Former criminal offenders — consideration in licensing, 37-1-203.

Licenses — discrimination in issuance prohibited, 49-3-204.

33-17-501 . Short title. This part may be cited as "The Montana Insurance Consultant Licensure Act".

History: En. 40-3339 by Sec. 1, Ch. 144, L. 1975; R.C.M. 1947, 40-3339.

33-17-502. Prohibition on holding out as consultant — receiving fee. (1) A person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or a person who uses any other designation or title that is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) A person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives a fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who makes recommendations or gives advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity; or

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services.

History: En. 40-3340, 40-3348 by Secs. 2, 10, Ch. 144, L. 1975; R.C.M. 1947, 40-3340, 40-3348; amd. Sec. 2, Ch. 86, L. 1979; amd. Sec. 40, Ch. 613, L. 1989; amd. Sec. 35, Ch. 713, L. 1989.

33-17-503. Application — fee — expiration. (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file in the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee of $50, which the commissioner shall deposit with the state treasurer to be credited to the state's general fund.

(2) Each consultant license must be renewed each year by the consultant paying a continuation fee on or before May 31, and the license continues in force unless suspended, revoked, or otherwise terminated.

History: En. 40-3341 by Sec. 3, Ch. 144, L. 1975; R.C.M. 1947, 40-3341; amd. Sec. 36, Ch. 713, L. 1989; amd. Sec. 52, Ch. 379, L. 1995.

33-17-504. Issuing license — limitations. The commissioner may issue a consultant license to an individual who has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221 through 33-1-229, as specified in the license.

History: En. 40-3342 by Sec. 4, Ch. 144, L. 1975; R.C.M. 1947, 40-3342; amd. Sec. 13, Ch. 467, L. 1981; amd. Sec. 37, Ch. 713, L. 1989.

33-17-505. Qualification examination. (1) In order to determine the competency of an applicant for a consultant license, the commissioner shall require the applicant to pass an examination.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination and collecting the fees required by 33-17-503. The commissioner may

arrange for the testing service to recover its cost of the examination from the applicant.

History: En. 40-3343 by Sec. 5, Ch. 144, L. 1975; amd. Sec. 1, Ch. 146, L. 1977; R.C.M. 1947, 40-3343; amd. Sec. 1, Ch. 324, L. 1987; amd. Sec. 38, Ch. 713, L. 1989; amd. Sec. 15, Ch. 316, L. 1999; amd. Sec. 33, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 316 deleted former (2) that read: "(2) The fee for taking the consultant license examination is $50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination may be no more than the cost of administering the examination, not to exceed $50"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 472 inserted (2) regarding the conduct of examinations; and made minor changes in style. Amendment effective October 1, 1999.

33-17-506. Grounds for refusal to issue license. The commissioner may refuse to issue a consultant license if, in his judgment, the applicant is not trustworthy and competent to act as a consultant, has given cause for revocation or suspension of a license, or has failed to comply with any prerequisite for the issuance of a license.

History: En. 40-3344 by Sec. 6, Ch. 144, L. 1975; R.C.M. 1947, 40-3344(part); amd. Sec. 39, Ch. 713, L. 1989.

33-17-507. Revocation. The commissioner may revoke or suspend a consultant license for a specified period after giving notice and conducting a hearing. To revoke or suspend a license, the commissioner shall determine that the licensee:

(1) has violated any provision of or any obligation imposed by the insurance law or has violated any law in the course of dealing as an insurance consultant;

(2) has made a material misstatement in application for a consultant license;

(3) has been guilty of fraudulent or dishonest practices; or

(4) has demonstrated incompetency or untrustworthiness to act as an insurance consultant.

History: En. 40-3344 by Sec. 6, Ch. 144, L. 1975; R.C.M. 1947, 40-3344(part); amd. Sec. 40, Ch. 713, L. 1989; amd. Sec. 34, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in first sentence of introductory clause before "period" inserted "specified" and after "hearing" deleted "as specified in this chapter"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Hearings by Commissioner, 33-1-313.

33-17-508 through 33-17-510 reserved.

33-17-511. Consideration for services only on written memorandum. A person licensed as an insurance consultant under this part may not receive a fee for examining, appraising, reviewing, or evaluating an insurance policy, bond, annuity or pension or profit-sharing contract, plan, or program or for making recommendations or giving advice with regard to any of the above unless the compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of the compensation. An insurance consultant shall retain a copy of every memorandum or contract for not less than 3 years after those services have been fully performed.

History: En. 40-3345 by Sec. 7, Ch. 144, L. 1975; R.C.M. 1947, 40-3345; amd. Sec. 41, Ch. 713, L. 1989.

33-17-512. Limitation on type of consideration. A licensed insurance consultant may not receive a commission, service fee, brokerage fee, or other valuable consideration for the sale or service of a line of insurance, annuity, security, or pension trust if the consultant has received compensation from the client for consulting services on the same line of insurance, annuity, security, or pension trust sold or serviced within the preceding 12 months.

History: En. 40-3346 by Sec. 8, Ch. 144, L. 1975; R.C.M. 1947, 40-3346; amd. Sec. 42, Ch. 713, L. 1989; amd. Sec. 1, Ch. 215, L. 1993.

33-17-513. Restrictions on insurers recommended by licensee. A person licensed as an insurance consultant under this part may not recommend or encourage the purchase of insurance, annuities, or securities from an authorized insurer in which he or any member of his immediate family holds an executive position or holds a substantial interest.

History: En. 40-3347 by Sec. 9, Ch. 144, L. 1975; R.C.M. 1947, 40-3347; amd. Sec. 43, Ch. 713, L. 1989.

Part 6

Administrators

Part Cross-References

Licenses — discrimination in issuance prohibited, 49-3-204.

33-17-601. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 1, Ch. 343, L. 1979; amd. Sec. 10, Ch. 409, L. 1987.

33-17-602. Written agreement required. (1) A person may not act as an administrator without a written agreement between the person and the insurer. The written agreement must be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement must contain provisions that include the requirements of 33-17-612 through 33-17-617 insofar as these requirements relate to the functions performed by the administrator.

(2) The agreement must contain a provision with respect to the underwriting or other standards pertaining to the business underwritten by the insurer.

(3) Whenever a policy is issued to a trustee, a copy of the trust agreement and any amendments to it must be furnished to the insurer by the administrator and be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter.

History: En. Sec. 2, Ch. 343, L. 1979; amd. Sec. 11, Ch. 409, L. 1987; amd. Sec. 44, Ch. 713, L. 1989.

33-17-603. Certificate of registration. (1) Except as provided in 33-17-604, a person may not act as or represent to the public that the person is an administrator in this state unless the person holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of $100. The commissioner shall issue the certificate unless the commissioner finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for a license denied for cause within 5 years.

(3) A certificate of registration must be renewed each year by the administrator paying a continuation fee of $100 on or before July 1. Upon payment, the certificate continues in force unless suspended, revoked, or otherwise terminated. The commissioner shall deposit the fee with the state treasurer to be credited to the general fund.

(4) A certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless a certification requirement is waived, a person who acts as an administrator without a certificate of registration is subject to a fine of not less than $500 or more than $1,500.

History: En. Sec. 12, Ch. 343, L. 1979; amd. Sec. 45, Ch. 713, L. 1989; amd. Sec. 8, Ch. 798, L. 1991; amd. Sec. 53, Ch. 379, L. 1995; amd. Sec. 148, Ch. 42, L. 1997.

Cross-References

Hearings on decisions of Commissioner, 33-1-701.

Former criminal offenders — consideration in licensing, 37-1-203.

33-17-604. Waiver of certification requirements. The commissioner may waive the requirements of 33-17-603 for any person or class of persons. The factors taken into account in granting a waiver include but are not limited to:

(1) whether the person acting as an administrator is primarily in a business other than that of administrator;

(2) whether the financial strength and history of the organization indicates stability in its continuity of doing business;

(3) whether the regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of the requirements.

History: En. Sec. 13, Ch. 343, L. 1979; amd. Sec. 46, Ch. 713, L. 1989.

33-17-605. Repealed. Sec. 19, Ch. 409, L. 1987.

History: En. Sec. 10, Ch. 343, L. 1979.

33-17-606 through 33-17-610 reserved.

33-17-611. Maintenance of information. For the duration of the agreement required by 33-17-602 and for 5 years thereafter, each administrator shall maintain at its principal administrative office adequate books and records of all transactions between the administrator, insurers, and insured persons. These books and records must be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to these books and records for examination, audit, or inspection. Any trade secrets contained in the books and records, including but not limited to the identity and addresses of policyholders and certificate holders, are confidential, except that the commissioner may use the information in any proceedings instituted against the administrator. The insurer retains the right to continuing access to those books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and the administrator.

History: En. Sec. 3, Ch. 343, L. 1979; amd. Sec. 47, Ch. 713, L. 1989.

33-17-612. Approval of advertising. An administrator may use only such advertising pertaining to the business underwritten by an insurer as is approved by the insurer in advance of its use.

History: En. Sec. 4, Ch. 343, L. 1979.

33-17-613. Collection of charges and premiums. (1) All insurance charges or premiums collected by an administrator on behalf of or for an insurer and return premiums received from the insurer are held by the administrator in a fiduciary capacity. These funds must be immediately remitted to the person entitled to them or must be deposited promptly in a fiduciary bank account established and maintained by the administrator. If deposited charges or premiums were collected on behalf of or for more than one insurer, the administrator shall require the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all these records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for the insurer.

(2) The administrator may not pay a claim by withdrawals from the fiduciary account. Withdrawals from the fiduciary account must be made, as provided in the written agreement between the administrator and the insurer, for:

(a) remittance to an insurer entitled to the remittance;

(b) deposit in an account maintained in the name of the insurer;

(c) transfer to and deposit in a claims paying account, with claims to be paid as provided in 33-17-615;

(d) payment to a group policyholder for remittance to the insurer entitled to the payment;

(e) payment to the administrator of its commission, fees, or charges; or

(f) remittance of return premiums to the person entitled to the premium.

History: En. Sec. 5, Ch. 343, L. 1979; amd. Sec. 48, Ch. 713, L. 1989.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

33-17-614. Treatment of payments. Whenever an insurer utilizes the services of an administrator under the terms of a written contract as required in 33-17-602, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured is considered to be received by the insurer and the payment of return premiums or claims by the insurer to the administrator is not considered payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from the administrator's failure to make payments to the insurer, insureds, or claimants.

History: En. Sec. 6, Ch. 343, L. 1979.

33-17-615. Payment of claims. All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of and as authorized by such insurer.

History: En. Sec. 7, Ch. 343, L. 1979.

33-17-616. Delivery of documents. Any policies, certificates, booklets, termination notices, or other written communications delivered by the insurer to the administrator for delivery to its policyholders shall be delivered by the administrator promptly after receipt of instructions from the insurer to do so.

History: En. Sec. 8, Ch. 343, L. 1979.

33-17-617. Claim adjustment and settlement. With respect to any policies where an administrator adjusts or settles claims, the compensation to the administrator with regard to the policies shall in no way be contingent on claim experience. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

History: En. Sec. 9, Ch. 343, L. 1979.

33-17-618. Insured persons to be notified of availability of administrator. Whenever the services of an administrator are utilized, the administrator shall provide a written notice, approved by the insurer, to insured individuals, advising them of the identity of and relationship between the administrator, the policyholder, and the insurer. Whenever an administrator collects funds, the administrator shall identify and state, separately in writing, to the person paying to the administrator any charge or premium for insurance coverage the amount of such charge or premium specified by the insurer for the insurance coverage.

History: En. Sec. 11, Ch. 343, L. 1979.

Parts 7 through 9 reserved

Part 10
Revocation, Suspension, and Penalties

33-17-1001. Suspension, revocation, or refusal of license. (1) Except as provided in 33-17-411, after a hearing, which must be held no less than 10 days after advance notice by certified mail, on charges given under 33-1-314(3), the commissioner may suspend for up to 5 years, revoke, refuse to continue, or deny a license issued under this chapter if the commissioner finds that the licensee or applicant has:

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;

(b) obtained or attempted to obtain a license through misrepresentation or fraud;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

(g) made a materially untrue statement in the license application or in the continuing education affidavit;

(h) misrepresented the terms of an actual or proposed insurance contract;

(i) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

(j) had a similar license suspended or revoked in any other state;

(k) forged another's name to an application for insurance;

(l) cheated on an examination for a license; or

(m) knowingly accepted insurance business from a person who is not licensed.

(2) The license of a partnership or corporation may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(e) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204.

History: En. Sec. 173, Ch. 286, L. 1959; R.C.M. 1947, 40-3329; amd. Sec. 6, Ch. 395, L. 1983; amd. Sec. 12, Ch. 409, L. 1987; amd. Sec. 28, Ch. 537, L. 1987; amd. Sec. 49, Ch. 713, L. 1989; amd. Sec. 2, Ch. 164, L. 1993; amd. Sec. 8, Ch. 622, L. 1993.

Cross-References

Termination of criminal's supervision — restoration of rights, Art. II, sec. 28, Mont. Const.

Revocation of surplus lines insurance producer license, 33-2-313.

Former criminal offenders — consideration in licensing, 37-1-203.

Felony — definition, 45-2-101.

33-17-1002. Procedure following suspension or revocation. (1) Upon suspension or revocation of a license, the commissioner shall immediately notify the licensee of the suspension or revocation either in person or by mail addressed to the licensee at his address last of record with the commissioner. Notice by mail is effectuated when the notice is mailed.

(2) The commissioner may not again issue a license under this code to a person whose license has been revoked until after expiration of 1 year and thereafter not until the person again qualifies for a license in accordance with this code. If the commissioner revokes a person's license, the commissioner may refuse to issue a license to the person for up to 5 years after the revocation. A person whose license has been revoked twice is not again eligible for any license under this code.

(3) If the license of a partnership or corporation is suspended or revoked, no member of the partnership or officer or director of the corporation may be licensed or be designated in a license to exercise its powers during the period of the suspension or revocation unless the commissioner determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

History: En. Sec. 174, Ch. 286, L. 1959; R.C.M. 1947, 40-3330; amd. Sec. 13, Ch. 409, L. 1987; amd. Sec. 50, Ch. 713, L. 1989.

33-17-1003. Return of license. (1) All licenses issued under this chapter, although issued and delivered to the licensee insurance producer or adjuster are at all times the property of the state of Montana. Upon any expiration, termination, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall immediately deliver it to the commissioner either by personal delivery or by mail.

(2) As to any license lost, stolen, or destroyed while in the possession of a licensee or person, the commissioner may accept in lieu of return of the license the affidavit of the licensee or person responsible for or involved in the safekeeping of the license, concerning the facts of the loss, theft, or destruction.

History: En. Sec. 175, Ch. 286, L. 1959; R.C.M. 1947, 40-3331; amd. Sec. 51, Ch. 713, L. 1989.

33-17-1004. Acting as insurance producer or adjuster without license — penalty. Except as provided in 33-17-411, a person who, in this state, acts as an insurance producer or adjuster without having authority to do so by virtue of a license issued and in force pursuant to this chapter is guilty of a misdemeanor and upon conviction shall be fined $500 or imprisoned in the county jail for 90 days, or both.

History: En. 40-3332 by Sec. 1, Ch. 256, L. 1967; R.C.M. 1947, 40-3332; amd. Sec. 22, Ch. 198, L. 1979; amd. Sec. 7, Ch. 395, L. 1983; amd. Sec. 14, Ch. 409, L. 1987; amd. Sec. 52, Ch. 713, L. 1989.

Part 11

Conduct of Business by Insurance Producers

33-17-1101. Place of business — display of license — records. (1) A resident insurance producer shall maintain a place or places of business in this state accessible to the public. A nonresident insurance producer may maintain a place or places of business in this state. An insurance producer's place or places of business must be a place in which transactions are conducted under the insurance producer's license. The street address or addresses of the place or places of business must appear upon the license. This section does not prohibit the maintenance of a place of business in a licensee's place of residence.

(2) The license must be conspicuously displayed in a place of business at the street address shown on the license in a part of the place of business customarily open to the public.

(3) The insurance producer shall keep at a place of business complete records pertaining to transactions under the license for a period of at least 3 years after

completion of the respective transactions, except that a title insurance producer, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216.

History: **En. Sec. 167, Ch. 286, L. 1959; R.C.M. 1947, 40-3323; amd. Sec. 10, Ch. 345, L. 1979; amd. Sec. 20, Ch. 519, L. 1985; amd. Sec. 15, Ch. 409, L. 1987; amd. Sec. 53, Ch. 713, L. 1989; amd. Sec. 1, Ch. 261, L. 1997.**

33-17-1102. Reporting and accounting for premiums — misappropriation. (1) All insurance premiums or return premiums received by an insurance producer must be held in a separate trust account. The insurance producer shall at all times act in a fiduciary capacity and shall, in the applicable regular course of business, account for and pay the insurance premiums or return premiums he receives to the insured, insurer, or insurance producer entitled to them. Except for a title insurance producer as defined in 33-25-105, an insurance producer may deposit and commingle in the same separate deposit all funds belonging to others so long as the amount of the deposit held for each respective person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any insurance producer not lawfully entitled to the funds may not divert or appropriate the funds or any portion of the funds to his own use.

(3) An insurance producer who unlawfully diverts or appropriates insurance premiums or return premiums to his own use is, upon conviction, guilty of theft and is punishable as provided by law.

History: **En. Sec. 168, Ch. 286, L. 1959; amd. Sec. 51, Ch. 359, L. 1977; R.C.M. 1947, 40-3324; amd. Sec. 21, Ch. 519, L. 1985; amd. Sec. 16, Ch. 409, L. 1987; amd. Sec. 54, Ch. 713, L. 1989.**

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

33-17-1103. Accepting and paying commissions, fees, or consideration — restriction. (1) An insurer or insurance producer may not pay, directly or indirectly, a commission, service fee, brokerage fee, or other valuable consideration to a person for services as an insurance producer unless the person performing the service holds a valid license with regard to the kind or kinds of insurance for which the service was rendered at the time the service was performed. A person not properly licensed in accordance with this chapter at the time he performs the service as an insurance producer may not accept a commission, service fee, brokerage fee, or other valuable consideration for the service. This section does not prevent payment or receipt of renewal or other deferred commissions to or by a person entitled to receive the payment under this section.

(2) An insurance producer may not directly or indirectly share his commissions or other compensation received or to be received by him on account of a transaction under his license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in the transactions, except as provided in 33-17-1113. This provision does not affect payment of the regular salaries due employees of the licensee, the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a partnership or corporation, or use of funds for family or personal purposes.

(3) This section does not apply to those transactions with surplus lines insurance producers that are lawful under 33-2-306.

History: **En. Sec. 169, Ch. 286, L. 1959; R.C.M. 1947, 40-3325; amd. Sec. 11, Ch. 345, L. 1979; amd. Sec. 17, Ch. 409, L. 1987; amd. Sec. 55, Ch. 713, L. 1989.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-17-1104. Repealed. Sec. 68, Ch. 713, L. 1989.

History: En. Sec. 170, Ch. 286, L. 1959; R.C.M. 1947, 40-3326; amd. Sec. 18, Ch. 409, L. 1987.

33-17-1105 and 33-17-1106 reserved.

33-17-1107. Prohibited relations with long-term care facility. An insurance producer that owns, manages, supervises, operates, maintains, or works in a long-term care facility as defined in 37-9-101 may not solicit, negotiate, transact, or effectuate a life or disability policy or certificate of insurance for a resident of a long-term care facility.

History: En. Sec. 1, Ch. 699, L. 1991.

33-17-1108 through 33-17-1110 reserved.

33-17-1111. Resident insurance producer required — reciprocity — countersignature — records. (1) An authorized insurer may not issue a policy covering a subject of insurance residing, located, or to be performed in Montana unless:

(a) the policy is written through a licensed insurance producer residing in Montana;

(b) the policy is written through a licensed nonresident insurance producer and, if a countersignature would be required by the resident state of the nonresident insurance producer upon a Montana resident insurance producer writing business in the resident state of the nonresident insurance producer, the policy or countersignature endorsement attached to the policy is countersigned by a Montana resident licensed insurance producer; or

(c) the policy is written through a licensed nonresident insurance producer who is a resident of a state that does not require countersignatures.

(2) A countersignature may not be made in blank. The insurance producer may by express written authorization given in advance delegate to his salaried clerical employee the power to countersign in the name of the insurance producer those policies or classes of policies designated in the authorization if the initials of the employee are written below the insurance producer's name on the countersignature, but the insurance producer may not thereby delegate or have power to delegate to a person the power or authority to bind an insurer with respect to a risk not already bound by the insurance producer or other person having clear authority from the insurer to bind. The insurance producer is responsible for all of the acts of the employee within the scope of the authority delegated. The insurance producer shall keep a record of all coverages countersigned by him or by his authority.

(3) This section does not apply to:

(a) reinsurance;

(b) life insurance, disability insurance, or annuity contracts;

(c) insurance of the rolling stock, vessels, or aircraft of any common carrier in interstate or foreign commerce or of any vehicle principally garaged and used in another state or covering any liability or other risks incident to the ownership, maintenance, or operation of any common carrier or vehicle;

(d) insurance of property in course of transportation interstate or in foreign trade or any liability or risk incident to the insurance;

(e) insurance of wet marine and transportation risks;

(f) countersignature to policies issued through insurance producers compensated only by salary or issued by insurers not using insurance producers in the general solicitation of business;

(g) bid bonds, as required under Title 18, chapter 1, part 2.

(4) Violation of this section does not invalidate a policy otherwise valid as between the insurer and the insured.

History: En. Sec. 67, Ch. 286, L. 1959; amd. Sec. 1, Ch. 72, L. 1963; R.C.M. 1947, 40-2822; amd. Sec. 12, Ch. 345, L. 1979; amd. Sec. 2, Ch. 395, L. 1983; amd. Sec. 56, Ch. 713, L. 1989.

33-17-1112. Salaried personnel not to countersign — exception for emergencies. (1) With respect to policies subject to countersignature requirements under 33-17-1111, only a licensed insurance producer residing in Montana, whose compensation as an insurance producer is by commission computed as a percentage of the premium received on each policy written, has power to countersign as required by 33-17-1111.

(2) A branch manager, state agent, special agent, general or any other like supervisory agent, or any other representative of the insurer, whose compensation from the insurer is in whole or in part by salary, does not have power to countersign policies or countersignature endorsements to policies; except that in an emergency where it is necessary that an insurance policy be issued without delay and no resident insurance producer having power to execute the policy is then reasonably available, then any other individual having authority from the insurer may execute the policy in the first instance in order to make a contract between the insurer and the obligee or the insured if the policy is subsequently countersigned in fact by a resident insurance producer.

History: En. Sec. 68, Ch. 286, L. 1959; R.C.M. 1947, 40-2823; amd. Sec. 57, Ch. 713, L. 1989.

33-17-1113. Policies originating outside state — commission of resident insurance producer. (1) As to a policy or an endorsement to a policy that is subject to countersignature requirements under 33-17-1111 contracted for or otherwise originating outside the boundaries of Montana, a commission of not less than 5% of the premium charged and received but not more than 50% of the commission paid by the insurer is payable to the countersigning insurance producer, so that a record within Montana will be kept of the business and so that the state may better receive any tax required by law to be paid with respect to the insurance. If, however, the originating insurance producer or the insurer desires additional service to be rendered during the term of the policy, then the compensation for the countersigning resident insurance producer must be in an additional amount as is fixed by mutual agreement of the parties in interest.

(2) If pursuant to the laws of another state the countersigning insurance producers of that state retain as commission or compensation with respect to business originated by Montana insurance producers more than 5% of the premium, then the Montana insurance producers who countersign policies representing business originated by insurance producers of the other state shall charge and receive a commission in an amount not less than that received by countersigning insurance producers of the other state.

History: En. Sec. 69, Ch. 286, L. 1959; R.C.M. 1947, 40-2824; amd. Sec. 58, Ch. 713, L. 1989.

33-17-1114. Policies issued at home or branch offices. Nothing in 33-17-1111 through 33-17-1113 prevents an insurer from issuing a policy, as to which the countersignature requirement of 33-17-1111 applies, at its home or branch office, but the policy must be subsequently countersigned, where otherwise required, by an insurance producer residing in Montana. The insurance producer residing in Montana shall receive the commission on the policy when the insurance premium is paid. This section does not apply to life insurance.

History: En. Sec. 70, Ch. 286, L. 1959; R.C.M. 1947, 40-2825; amd. Sec. 59, Ch. 713, L. 1989.

Part 12

Insurance Producer and Consultant Continuing Education Act

33-17-1201. Short title. This part may be cited as the "Insurance Producer and Consultant Continuing Education Act".

History: En. Sec. 1, Ch. 622, L. 1993.

33-17-1202. Purpose. The purposes of this part are to:

(1) protect insurance consumers and dedicated insurance producers and consultants by requiring continuing education for insurance producers and consultants;

(2) better educate insurance producers and consultants about changes in insurance law, products, ethical conduct as an insurance producer or consultant, marketing, and management; and

(3) provide standards for the qualification of instructors, courses, and materials.

History: En. Sec. 2, Ch. 622, L. 1993.

33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;

(d) a person licensed to act as an insurance producer only for credit life and disability insurance shall, during each calendar year, complete 2 ½ credit hours of approved continuing education in the areas of insurance law, ethics, or credit life and disability insurance;

(e) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(7)(d) through (7)(k);

(b) a person holding a temporary license issued under 33-17-216;

(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state grants substantially similar privileges to and has similar requirements for residents of this state;

(d) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;

(e) a person who only executes surety bail bonds; or

(f) an insurance producer or consultant otherwise exempted by the commissioner.

History: **En. Sec. 3, Ch. 622, L. 1993; amd. Sec. 2, Ch. 98, L. 1995; amd. Sec. 1, Ch. 456, L. 1997; amd. Sec. 27, Ch. 531, L. 1997; amd. Sec. 35, Ch. 472, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 472 in (1)(d) near middle after "complete" substituted "2 ½" for "5"; and at end of (4)(a) substituted "(7)(k)" for "(7)(h)". Amendment effective January 1, 2000.

33-17-1204. Review and approval of continuing education courses by commissioner — advisory council. (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The fee for approval of a course, lecture, seminar, or instructional program is listed in 33-2-708(2). The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of one representative of the independent insurance agents of Montana, one representative of the Montana association of life underwriters, one representative of the professional insurance agents of Montana, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318.

History: **En. Sec. 4, Ch. 622, L. 1993; amd. Sec. 16, Ch. 316, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 316 in (1) at beginning of third sentence after "The" deleted "filing", after "fee" deleted "and process", and at end substituted "is listed in 33-2-708(2)" for "must be determined by the commissioner by rule". Amendment effective January 1, 2000.

33-17-1205. Compliance — failure to comply. (1) Each person subject to the requirements of 33-17-1203 shall file annually on a form supplied by the commissioner written certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person during the preceding calendar year.

(2) The commissioner may suspend the license of any person failing to comply with subsection (1) who has not been granted an extension under 33-17-1203 and may impose a late renewal fee of $20, which is the same amount previously determined by an administrative rule in effect on November 3, 1998. The suspension must remain in effect until the time that the person demonstrates to the satisfaction of the commissioner that the person has complied with all the

provisions of this part. If the license of an insurance producer or consultant is suspended by reason of this section for a period exceeding 12 months, the license must be terminated upon notice to the insurance producer or consultant.

(3) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all persons who have successfully completed an approved continuing education activity during the preceding calendar year.

(4) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection (3). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection (3). The fine may not exceed the penalty permitted by 33-1-317.

History: En. Sec. 5, Ch. 622, L. 1993; amd. Sec. 17, Ch. 316, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 316 in (1) deleted former second sentence that read: "The form must be accompanied with a filing fee established by the commissioner"; and in (2) at end after "renewal fee" substituted "of $20, which is the same amount previously determined by an administrative rule in effect on November 3, 1998" for "in the amount of twice the annual filing fee". Amendment effective January 1, 2000.

33-17-1206. Rulemaking authority. The commissioner may adopt rules to implement this part.

History: En. Sec. 6, Ch. 622, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-17-1207. Funding for continuing education program. All annual continuing education filing fees collected by the commissioner and fees paid to the commissioner for the review of initial applications for approval of continuing education courses or the periodic review of these courses must be turned over promptly to the state treasurer who shall place the money in the state special revenue fund to the credit of the state auditor's office to be used for the continuing education program. The funds allocated by this section to the state special revenue fund may be used only to defray the expenses of the state auditor's office in discharging its duties as prescribed by this part, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state money. The state auditor is responsible for the proper expenditure of this money as provided by law.

History: En. Sec. 9, Ch. 622, L. 1993.

CHAPTER 18

UNFAIR TRADE PRACTICES

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Chapter Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Personal solicitation sales — exemption for insurance sales, 30-14-502.

Insurance contracts — policy requirements — construction, Title 33, ch. 15.

Part 1

General Provisions

33-18-101. Purposes. The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in Public Law 79-15 (the McCarran-Ferguson Act, 15 U.S.C. 1011 through 1015), which was approved March 9, 1945, by defining or providing for determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

History: En. Sec. 203, Ch. 286, L. 1959; amd. Sec. 6, Ch. 320, L. 1977; R.C.M. 1947, 40-3501.

33-18-102. Unfair methods or deceptive practices prohibited — refusal to renew. (1) No person shall engage in this state in any trade practice which is defined in this chapter as or determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

(2) Nothing in this chapter shall be construed to prevent an insurer owned or controlled by an association or organization, including a mutual insurer formed to provide insurance to the members of an association or organization, from refusing to renew a casualty or liability policy for nonpayment of dues to the association or organization if payment of dues is a condition for obtaining or continuing such insurance.

History: En. Sec. 204, Ch. 286, L. 1959; R.C.M. 1947, 40-3502; amd. Sec. 2, Ch. 319, L. 1981; amd. Sec. 1, Ch. 143, L. 1983.

Part 2

Insurer's Relations With Insured and Claimant

33-18-201. Unfair claim settlement practices prohibited. No person may, with such frequency as to indicate a general business practice, do any of the following:

(1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

History: En. 40-3502.1 by Sec. 1, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.1.

Cross-References

Punitive damages — when allowed, 27-1-220.

Insurance contracts — policy requirements — construction, Title 33, ch. 15.

Administrative penalty for failure to pay promptly — determination by Commissioner whether delay is general course of business practice, 33-18-232.

Crop hail insurance, Title 80, ch. 2, part 2.

33-18-202. Misrepresentation and false advertising of policies prohibited. No person shall make, issue, circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, sales presentation, omission, comparison, or statement which:

(1) misrepresents the benefits, advantages, conditions, or terms of any insurance policy;

(2) misrepresents the dividends or share of the surplus to be received on any insurance policy;

(3) makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;

(4) is misleading or is a misrepresentation as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates;

(5) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

(6) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(7) misrepresents any insurance policy as being shares of stock.

History: En. Sec. 205, Ch. 286, L. 1959; R.C.M. 1947, 40-3503; amd. Sec. 1, Ch. 9, L. 1979.

33-18-203. False or deceptive advertising prohibited. No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

History: En. Sec. 206, Ch. 286, L. 1959; R.C.M. 1947, 40-3504.

Cross-References

Civil libel, 27-1-802.

Criminal defamation, 45-8-212.

33-18-204. Twisting prohibited. No person shall make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, surrender, retain, exchange, or convert any insurance policy.

History: En. Sec. 207, Ch. 286, L. 1959; R.C.M. 1947, 40-3505.

33-18-205. Filing or publishing false financial statements or making false entries prohibited. (1) No person shall file with any supervisory or other public official or make, publish, disseminate, circulate, or deliver to any person or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of an insurer with intent to deceive.

(2) No person shall make any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom such insurer is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer. Any person who aids or abets in any such violation of this section shall be punishable upon conviction by a fine of $1,000 or by imprisonment in the county jail for 6 months or both such fine and imprisonment.

History: En. Sec. 208, Ch. 286, L. 1959; amd. Sec. 1, Ch. 29, L. 1967; R.C.M. 1947, 40-3506.

Cross-References

Unsworn falsification to authorities — misdemeanor, 45-7-203.

Misdemeanor — definition, 46-18-212.

33-18-206. Unfair discrimination prohibited — life insurance, annuities, and disability insurance. (1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such contract.

(2) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder or in any of the terms or conditions of such contract or in any other manner whatever.

(3) An insurer may not refuse to consider an application for life or disability insurance on the basis of a genetic condition, developmental delay, or developmental disability.

(4) The rejection of an application or the determining of rates, terms, or conditions of a life or disability insurance contract on the basis of genetic condition, developmental delay, or developmental disability constitutes unfair discrimination unless the applicant's medical condition and history and either claims experience or actuarial projections establish that substantial differences in claims are likely to result from the genetic condition, developmental delay, or developmental disability.

(5) As used in this section, the following definitions apply:

(a) "Developmental delay" means a delay of at least 1 ½ standard deviations from the norm.

(b) "Developmental disability" means the singular of developmental disabilities as defined in 53-20-202.

(c) "Genetic condition" means a specific chromosomal or single-gene genetic condition.

History: En. Sec. 211, Ch. 286, L. 1959; R.C.M. 1947, 40-3509; amd. Sec. 1, Ch. 318, L. 1991.

33-18-207. Preferred rates to fictitious groups prohibited — approval of preferred group rates and forms. (1) No insurer, whether an authorized insurer or an unauthorized insurer, shall make available through any rating plan or form, property, casualty, or surety insurance to any firm, corporation, or association of individuals, any preferred rate or premium based upon any fictitious group of such firm, corporation, or association of individuals.

(2) No form or plan of insurance covering any group or combination of persons or risks shall be written or delivered within or outside this state to cover persons or risks in this state at any preferred rate or on any form other than as offered to persons not in such group or combination and to the public generally unless such form, plan of insurance, and the rates or premiums to be charged therefor have been submitted to and approved by the commissioner as being not unfairly discriminatory and as not otherwise being in conflict with subsection (1) above or with any provision of parts 1 through 4 of chapter 16 to the extent that parts 1 through 4 are, by their terms, applicable thereto.

(3) This section does not apply to life insurance, disability insurance, workers' compensation insurance written for industry or business associations, or annuity contracts. However, workers' compensation group insurance rates are subject to all applicable provisions of chapter 16, part 10.

History: En. Sec. 222, Ch. 286, L. 1959; amd. Sec. 1, Ch. 292, L. 1977; R.C.M. 1947, 40-3520.

33-18-208. Contract to contain agreements — rebates prohibited — life, disability, and annuity contracts. Except as otherwise expressly provided by law, no person shall knowingly:

(1) permit or offer to make or make any contract of life insurance, life annuity, or disability insurance or agreement as to such contract other than as plainly expressed in the contract issued thereon;

(2) pay or allow or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity any rebate of premiums payable on the contract or any special favor or advantage in the dividends or other benefits thereon or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever not specified in the contract;

(3) directly or indirectly give or sell or purchase or offer or agree to give, sell, purchase, or allow as inducement to such insurance or annuity or in connection therewith and whether or not to be specified in the policy or contract, any agreement of any form or nature promising returns and profits or any stocks, bonds, or other securities or interest present or contingent therein or as measured thereby of any insurance company or other corporation, association, or partnership or any dividends or profits accrued or to accrue thereon; or

(4) offer, promise, or give anything of value whatsoever not specified in the contract.

History: En. Sec. 212, Ch. 286, L. 1959; R.C.M. 1947, 40-3510.

33-18-209. Exceptions to discrimination and rebates provision. Nothing in 33-18-206 and 33-18-208 shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer;

(2) in the case of life insurance policies issued on the industrial debit, preauthorized check, bank draft, or similar plans, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer or by preauthorized check, bank draft, or similar plans, in an amount which fairly represents the saving in collection expense;

(3) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(4) reduction of premium rate for policies of large amount but not exceeding savings in issuance and administration expenses reasonably attributable to such policies as compared with policies of similar plan issued in smaller amounts;

(5) issuing life or disability insurance policies on a salary savings or payroll deduction plan at reduced rate reasonably commensurate with the savings made by the use of such plan.

History: En. Sec. 213, Ch. 286, L. 1959; R.C.M. 1947, 40-3511.

Cross-References

Discrimination in insurance and retirement plans, 49-2-309.

33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances. (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) An insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) This section may not be construed as prohibiting the payment of commissions or other compensation to duly licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or

unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk or on the personal property contained in the residential property, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual. However, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual based solely on adverse information contained in a driving record that is 3 years old or older. However, an insurer may provide discounts to an insured based on favorable aspects of an insured's claims history that is 3 years old or older.

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault.

(11) (a) For the purposes of this subsection (11), "credit history" means that portion of a credit report or background report that addresses the applicant's or insured's debt payment history or lack of history but does not include public information including convictions, lawsuits, bankruptcies, or similar public information.

(b) An insurer writing automobile or homeowner insurance may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the scope or amount of coverage or benefits available to an individual based solely on the insurer's knowledge of the individual's credit history unless:

(i) the insurer possesses substantial documentation that credit history is significantly correlated with the types of risks insured or to be insured;

(ii) the insurer sends written communication to the individual disclosing that the insurance coverage was declined, not renewed, or limited in scope or amount of coverage or benefits because of credit information relating to the applicant or the insured; and

(iii) upon subsequent request of the individual, mailed within 10 days of receipt of the denial, nonrenewal, or limitation, the insurer provides the individual with a copy of the credit report at issue or the name and address of a third party from whom the individual may obtain a copy of the credit report, within 10 days of receipt of the request.

(c) The provisions of this subsection (11) are not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act applicable to lending institutions, credit bureaus, or other credit service organizations that maintain or distribute credit histories on insurance applicants or policyholders.

History: En. Sec. 214, Ch. 286, L. 1959; amd. Sec. 1, Ch. 191, L. 1969; amd. Sec. 5, Ch. 38, L. 1977; amd. Sec. 8, Ch. 320, L. 1977; R.C.M. 1947, 40-3512; amd. Sec. 19, Ch. 303, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 5, Ch. 699, L. 1991; amd. Sec. 35, Ch. 798, L. 1991; amd. Sec. 2, Ch. 320, L. 1995; amd. Sec. 1, Ch. 427, L. 1995.

Cross-References

Discrimination in insurance and retirement plans, 49-2-309.

33-18-211. Stock operations and advisory board contracts. No person shall issue or deliver or permit its insurance producers, officers, or employees to issue or deliver agency company stock or other capital stock or benefit certificates or shares in any common-law corporation or any advisory board contract or other similar contract of any kind promising returns and profits as an inducement to insurance.

History: En. Sec. 215, Ch. 286, L. 1959; R.C.M. 1947, 40-3513; amd. Sec. 1, Ch. 713, L. 1989.

33-18-212. Illegal dealing in premiums — improper charges for insurance. (1) A person may not willfully collect any sum as a premium or charge for insurance that is not then provided or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as authorized by this code.

(2) A person may not willfully collect as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to the insurance and, as specified in the policy, in accordance with the applicable classifications and rates filed with or approved by the commissioner; or in cases in which classifications, premiums, or rates are not required by this code to be filed or approved, the premiums and charges may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision may not prohibit the charging and collection, by surplus lines insurance producers licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. This provision may not prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

(3) Each violation of this section is punishable under 33-1-104.

History: En. Sec. 221, Ch. 286, L. 1959; R.C.M. 1947, 40-3519; amd. Sec. 1, Ch. 86, L. 1979; amd. Sec. 29, Ch. 537, L. 1987; amd. Sec. 41, Ch. 613, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 54, Ch. 379, L. 1995.

33-18-213. Extension of credit to policyholder. Notwithstanding any other provision of law, an insurance producer, as defined in 33-17-102, may extend credit to a policyholder in connection with the issuance or servicing of any policy procured or negotiated by the insurance producer, but any credit so extended must satisfy one of the following requirements:

(1) if credit is extended to a policyholder for not more than 30 days from the date the premium is due and the credit is not evidenced by a written instrument, no interest may be charged; or

(2) if credit is extended to a policyholder for more than 30 days from the date the premium is due and the credit is not evidenced by a written instrument, interest may be charged for credit extended after 30 days at a rate not more than 1 ½% a month on the unpaid balance; or

(3) if the extension of credit to a policyholder is evidenced by a written instrument signed by the policyholder, any interest charged for such credit shall be clearly stated in the instrument and may not exceed the legal rate of interest authorized in 31-1-107.

History: En. Sec. 1, Ch. 128, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-18-214. Unfair referral as unfair trade practice. A referral made in violation of 33-22-1518 is an unfair trade practice under this chapter.

History: En. Sec. 3, Ch. 357, L. 1995.

33-18-215. Postclaim underwriting prohibited — condition. An insurer, health service corporation, or health maintenance organization may not place an elimination rider on or rescind coverage provided by a disability policy, certificate, or subscriber contract after a policy, certificate, or contract has been issued unless the insured has made a material misrepresentation or fraudulent misstatement on the application or has failed to pay the premium when due.

History: En. Sec. 1, Ch. 53, L. 1997.

33-18-216. Unfair discrimination against victims of abuse prohibited. (1) An insurer, health maintenance organization, or health service corporation may not unfairly discriminate against a victim of abuse.

(2) For purposes of this section, "abuse" means the occurrence between family members, current or former household members, or intimate partners of one or more of the following:

(a) purposely, knowingly, or recklessly subjecting another person, including a minor child, to bodily injury, severe emotional distress, psychological trauma, sexual assault, or sexual intercourse without consent;

(b) subjecting another person, including a minor child, to false imprisonment or unlawful restraint or confinement.

(3) For purposes of this section, "abuse" includes purposely or knowingly engaging in a course of conduct toward a family member, current or former household member, or intimate partner that constitutes stalking in violation of 45-5-220.

(4) The following acts, when based on the insured's status as a victim of abuse, are prohibited as unfairly discriminatory:

(a) denying, refusing to issue, renew, or reissue, canceling, or otherwise terminating an insurance policy, certificate of coverage delivered or issued for delivery in Montana, subscriber contract, or health care services agreement;

(b) restricting or excluding coverage under an insurance policy or certificate delivered or issued for delivery in Montana;

(c) adding a premium differential to any insurance policy or certificate delivered or issued for delivery in Montana on the basis that the applicant or insured has been the victim of abuse; or

(d) excluding or limiting coverage for losses or denying a claim.

(5) Upon written request of the insured or an applicant, an insurer that takes an underwriting action that adversely affects a victim of abuse on the basis of a medical condition or property or casualty risk that the insurer knows is related to abuse shall explain to the insured or applicant in writing the reason for the insurer's action.

(6) (a) This section does not prohibit an insurer from underwriting, classifying risk, or administering a contract of insurance as otherwise allowed by law based on property or casualty risk or medical information that the insurer knows is related

to abuse as long as the insurer underwrites, classifies risk, or administers the contract of insurance on the basis of the applicant's or insured's property or casualty risk or medical condition and not on the applicant's or insured's status as a victim of abuse.

(b) This section does not prohibit or otherwise limit an insurer's ability to elicit information from or about an applicant or insured as otherwise provided by law.

(7) This section may not be construed to alter or modify any conditions, exclusions, or limitations clearly stated in an insurance policy or certificate delivered or issued for delivery in Montana that are not otherwise inconsistent with the provisions of subsection (4).

(8) An insurer may not be held civilly or criminally liable for the death of or physical injury to an insured that is related to acts of abuse resulting from any action taken in a good faith effort to comply with the requirements of this section.

History: En. Sec. 1, Ch. 304, L. 1997.

33-18-217 through 33-18-220 reserved.

33-18-221. Designation of specific repair shops and discrimination against insured customers prohibited — lists allowed. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured in whole or in part under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service.

History: En. Sec. 1, Ch. 554, L. 1993; amd. Sec. 2, Ch. 526, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 526 in (3) before "prevailing" deleted "lowest"; and inserted (5) pertaining to charges for services for insured versus uninsured customers. Amendment effective October 1, 1999.

33-18-222. Prevailing market price. For purposes of 33-18-221, 33-18-223, and 33-18-224, "prevailing market price" means the lowest competitive and generally accepted market price in a local area. The prevailing market price may not be less than cost as provided in 30-14-209.

History: En. Sec. 2, Ch. 554, L. 1993; amd. Sec. 3, Ch. 526, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 526 in first and second sentences before "prevailing" deleted "lowest"; in first sentence after "33-18-223" inserted "and 33-18-224" and after "lowest" inserted "competitive and generally accepted"; and made minor changes in style. Amendment effective October 1, 1999.

33-18-223. Prohibited activities — glass broker defined. (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work;

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the prevailing market price as provided in 33-18-222;

(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or

(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work or that installs or manufactures glass or provides glass for installation.

History: En. Sec. 3, Ch. 554, L. 1993; amd. Sec. 2, Ch. 207, L. 1997; amd. Sec. 4, Ch. 526, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 526 in (1)(c) before "prevailing" deleted "lowest"; inserted (1)(d) pertaining to the establishment of an agreement for the processing of claims or bills; inserted (1)(e) pertaining to sharing information with a glass manufacturing, replacement, or repair entity; at end of (2) inserted "or that installs or manufactures glass or provides glass for installation"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Automobile glass — sale, repair, or replacement — advertising allowed, 30-14-225.

Windshield tinting — restrictions, 61-9-405.

33-18-224. Designation of specific automobile repair shops prohibited — certain requirements — allowances. (1) An insurance company, including its employees and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require or encourage a person insured or a claimant under the policy to use a particular automobile repair business or location;

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or a claimant or provides an incentive or inducement for an insured person or a claimant to use a particular automobile repair business or location;

(c) except as provided in subsection (2):

(i) suggest the use of a particular automobile repair business or location;

(ii) mention or provide the name of a particular automobile repair business or location;

(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or

(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business; or

(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.

(2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and

(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:

(i) write automobile insurance for primarily one insurer; or

(ii) are contractually obligated to use one automobile insurer before using other insurers.

(3) An insurer may:

(a) provide an insured person or a claimant with a list of all established automobile repair businesses or locations reasonably close to the insured person or claimant that offer a warranty for the automobile repair services provided by the businesses or locations; or

(b) provide an insured person or a claimant with a list of particular automobile repair businesses or locations that are reasonably close to the insured person or claimant that meet reasonable standards of quality, service, and safety .

(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:

(a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.

(b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.

(5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.

(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list.

(7) The insured may use a business or location at the insured's or claimant's sole discretion. The insurance company shall pay for the reasonable and necessary

cost of the automobile repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile repair services than the prevailing market price, as defined in 33-18-222. An insurer shall inform the insured person or claimant of the insured person's or claimant's rights under this subsection.

(8) If the insured person or claimant uses an automobile repair business or location not on a list provided under subsection (3)(a) or (3)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

(9) It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

(10) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section unless the independent adjuster is clearly acting at the direction of the insurance company.

(11) For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products.

History: En. Sec. 1, Ch. 292, L. 1997; amd. Sec. 5, Ch. 526, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 526 in (1) in introductory clause after "including its" substituted "employees" for "producers"; in (1)(a) inserted "or encourage" and inserted "or a claimant"; in (1)(b) in two places inserted "or a claimant"; inserted (1)(c) prohibiting mentioning or suggesting or directing the use of a particular automobile repair business; inserted (1)(d) prohibiting having producers direct the use of a particular automobile repair business; inserted (2) designating how provisions of subsection (1) apply to insurance producers; inserted language in (3) allowing for the provision of certain information by an insurer for former (3) that read: "(3) For the purposes of this section, an incentive or inducement does not include:

(a) providing an insured person or a customer with a list of all established automobile repair businesses or locations reasonably close to the insured person or customer that offer a warranty for the automobile repair services provided by the businesses or locations;

(b) providing an insured person or a customer with a list of particular body shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or

(c) referring to a warranty issued by an automobile repair business or location"; inserted (4) establishing requirements for an insurer providing a list of repair facilities to insureds; inserted (5) providing for the submission of complaints to the insurance commissioner; inserted (6) prohibiting certain actions by an insurer when distributing an automobile repair facility list to an insured; in (7) in first sentence inserted "or claimant's", in second and third sentences after "automobile" deleted "body", in third sentence before "prevailing" deleted "lowest", and inserted fourth sentence requiring insurer to inform insured of certain rights; in (8) near beginning inserted "or claimant"; in (10) at end inserted "unless the independent adjuster is clearly acting at the direction of the insurance company"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Montana Professional Tow Truck Act, Title 61, ch. 8, part 9.

State law enforcement rotation system — local government rotation system, 61-8-908.

33-18-225 through 33-18-230 reserved.

33-18-231. State administrative process to provide timely payment of medical benefits — definitions. In 33-18-231 through 33-18-235 the following definitions apply:

(1) "Insurer" means any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit health care corporation, health maintenance organization, self-insurer, or third-party

administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state.

(2) "Proof of loss" means any document accepted by an insurer upon which payment of benefits is made.

History: **En. Sec. 1, Ch. 300, L. 1983.**

33-18-232. Time for payment of claims. (1) If within 30 days after receipt of a proof of loss, the insurer has not paid the claim for benefits provided in the policy or contract or notified the insured or the insured's assignee of the reasons for failure to pay the claim in full and has not requested additional information or documents, the insured or the assignee may report the delay to the commissioner, who may then investigate to determine if the insurer has failed to pay the claim within 30 days of its receipt without good reason and, if so, whether such delay is a general course of business practice of the insurer.

(2) Upon the commissioner's determination that the delay is a general course of business practice and for a year thereafter unless earlier rescinded by the commissioner, all claims for benefits not paid by that insurer within 30 working days after receipt by the insurer, without good reason as determined by the commissioner, shall obligate the insurer to pay interest at 18% a year from the date the commissioner determines that the delay became unreasonable.

History: **En. Sec. 2, Ch. 300, L. 1983.**

Cross-References

Unfair claim settlement practices — unreasonable refusal to pay claims, 33-18-201.

33-18-233. Administrative penalty for failure to pay promptly. (1) The commissioner may, after a hearing, impose an administrative fine as set forth in subsection (2) on an insurer if he finds that the insurer as a general course of business practice in this state fails to:

(a) use due diligence in processing all claims;

(b) pay claims in a timely manner;

(c) provide proper notice, when required, with respect to the reasons for the insurer's failure to make claim payments when due; or

(d) pay, without just cause, proper claims arising under coverage provided by its policies, whether such claims are in favor of an insured, in favor of a third person with respect to the liability of an insured to such third person, or in favor of any other person entitled to the benefits of a policy.

(2) The administrative penalty imposed for violations of 33-18-231 through 33-18-235 may not exceed $1,000 for each separate violation.

(3) If an insurer can demonstrate that it has consistently paid 90% of the total amount outstanding in claims within 20 working days and all of the amount within 30 working days of receipt of claims during the 6-month period immediately preceding the hearing date, the insurer is not subject to the fine imposed under subsection (2).

History: **En. Sec. 3, Ch. 300, L. 1983.**

Cross-References

Unfair claim settlement practices — unreasonable refusal to pay claims, 33-18-201.

33-18-234. Right of privacy guaranteed. Nothing in 33-18-231 through 33-18-235 requires the commissioner to disclose information in violation of the Insurance Information and Privacy Protection Act.

History: **En. Sec. 4, Ch. 300, L. 1983.**

Cross-References

Insurance information and privacy protection, Title 33, ch. 19.

33-18-235. Rulemaking authority. The commissioner shall make rules, under the Montana Administrative Procedure Act, necessary to implement 33-18-231 through 33-18-234.

History: En. Sec. 5, Ch. 300, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

33-18-236 through 33-18-240 reserved.

33-18-241. Repealed. Sec. 2, Ch. 278, L. 1987.

History: En. Sec. 1, Ch. 504, L. 1985.

33-18-242. Independent cause of action — burden of proof. (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201.

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201. Exemplary damages may also be assessed in accordance with 27-1-221.

(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

(6) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

(7) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

(8) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them.

History: En. Sec. 3, Ch. 278, L. 1987.

Part 3

Insurers — Noninsurance-Related Prohibitions

33-18-301. Prohibited relations with mortuaries. (1) A life insurer and its board of directors, officers, employees, or representatives may not own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment in Montana.

(2) A life insurer may not contract or agree with any funeral director, mortuary, or undertaker that the funeral director, undertaker, or mortuary shall conduct the funeral or be named beneficiary of any person insured by the insurer. This subsection does not prohibit a life insurer from making insurance, designated as funeral insurance, available.

(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

(a) the policy is a life insurance product;

(b) the applicant may designate the beneficiary if there is an appropriate and insurable interest;

(c) the beneficiary may use the proceeds for any purpose; and

(d) any attempt by the insurer or its representative to have the insured designate a specific beneficiary, including but not limited to a funeral director, mortuary, or undertaker, constitutes a violation of this section punishable as a misdemeanor pursuant to subsection (4).

(4) Each violation of this section constitutes a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 223, Ch. 286, L. 1959; R.C.M. 1947, 40-3521; amd. Sec. 23, Ch. 198, L. 1979; amd. Sec. 1, Ch. 229, L. 1981; amd. Sec. 55, Ch. 379, L. 1995; amd. Sec. 36, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) near beginning after "its" inserted "board of directors"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Morticians — general provisions, Title 37, ch. 19, part 1.

Misdemeanor — definition, 46-18-212.

33-18-302. Defaming insurer prohibited. No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer or of an organization proposing to become an insurer and which is calculated to injure any person engaged or proposing to engage in the business of insurance.

History: En. Sec. 209, Ch. 286, L. 1959; R.C.M. 1947, 40-3507.

Cross-References

Civil libel, 27-1-802.

Criminal defamation, 45-8-212.

33-18-303. Boycott, coercion, or intimidation prohibited. No person shall enter into any agreement to commit or by any concerted action commit any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance.

History: En. Sec. 210, Ch. 286, L. 1959; R.C.M. 1947, 40-3508.

Cross-References

Restraint of trade, 30-14-205.

Intimidation — criminal offense, 45-5-203.

33-18-304. Interlocking ownership and management — restrictions. (1) Any insurer may retain, invest in, or acquire the whole or any part of the capital stock of any other insurer or insurers or have a common management with any other insurer or insurers unless such retention, investment, acquisition, or common management is inconsistent with any other provision of this code or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be director of two or more insurers which are competitors unless the effect thereof is to lessen substantially competition between insurers generally or tends materially to create a monopoly.

History: **En. Sec. 219, Ch. 286, L. 1959; R.C.M. 1947, 40-3517.**

Cross-References

Affiliation and merger — holding company systems, Title 33, ch. 2, part 11.

33-18-305. Political contributions prohibited — penalty. (1) No insurer shall directly or indirectly pay or use or offer, consent, or agree to pay or use any money or property for or in aid of any political party, committee, or organization or for or in aid of any corporation or other body organized or maintained for political purposes or for or in aid of any candidate for political office or for nomination for such office or for any political purpose whatsoever or for the reimbursement or indemnification of any person for money or property so used.

(2) Any officer, director, stockholder, attorney, or insurance producer of any insurer which violates any of the provisions of this section, who participates in, aids, abets, or advises or consents to any such violation and any person who solicits or knowingly receives any money or property in violation of this section shall be guilty of a misdemeanor and be punished by imprisonment for not more than 1 year and a fine of not more than $1,000; and any officer or director aiding or abetting in any contribution made in violation of this section shall be liable to the insurer for the amount so contributed.

History: **En. Sec. 220, Ch. 286, L. 1959; R.C.M. 1947, 40-3518; amd. Sec. 1, Ch. 713, L. 1989.**

Cross-References

Prohibited contributions from corporations, 13-35-227.

Campaign finance, Title 13, ch. 37, part 2.

Misdemeanor, 46-18-212.

Part 4

Insured's Relations With Insurer

33-18-401. False application, claim, and proof of loss — criminal penalty. (1) An insurance producer, examining physician, applicant, or other person who knowingly or willfully makes a false or fraudulent statement or representation in or with reference to an application for insurance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months or both such fine and imprisonment at the discretion of the court.

(2) An insurance producer, examining physician, applicant, or other person who, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him.

History: **En. Sec. 224, Ch. 286, L. 1959; R.C.M. 1947, 40-3522; amd. Sec. 60, Ch. 713, L. 1989.**

Part 5

Miscellaneous Prohibitions

33-18-501. Lenders — restrictions on solicitation, rejection, charges, and disclosure — favoring insurance producer prohibited. (1) No person may require as a condition precedent to the lending of money or extension of credit or any renewal thereof that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance negotiate any contract of insurance or renewal thereof through a particular insurer or group of insurers or insurance producer or group of insurance producers.

(2) No person who lends money or extends credit may:

(a) solicit insurance for the protection of real property, after a person indicates interest in securing a first-mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;

(b) unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection is not unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards may not discriminate against any particular type of insurer or call for rejection of an insurance contract because the contract contains coverage in addition to that required by the credit transaction.

(c) require that any borrower, mortgagor, purchaser, insurer, or insurance producer pay a separate charge in connection with the handling of any contract of insurance required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection (2)(c) does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document.

(d) use or disclose information relative to a contract of insurance which is required by the credit transaction:

(i) for the purpose of replacing such insurance; and

(ii) without the prior written consent of the borrower;

(e) require any procedures or conditions of licensed insurance producers or insurers not customarily required of those insurance producers or insurers affiliated or in any way connected with the person who lends money or extends credit.

(3) Each person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (2) of this section must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or insurance producer of the borrower's choice, subject only to the lender's right to reject a given insurer or insurance producer as provided in subsection (2)(b). Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be compliance with this subsection.

(4) The commissioner may examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(5) Nothing herein prevents a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(6) Nothing contained in this section applies to credit life or credit accident and health insurance.

History: En. 40-3516.1 by Sec. 5, Ch. 320, L. 1977; R.C.M. 1947, 40-3516.1; amd. Sec. 1, Ch. 281, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 35, Ch. 798, L. 1991.

Cross-References

Regulated lender — definition, 31-1-111.

Property insurance, Title 33, ch. 24.

Parts 6 through 8 reserved

Part 9

Restrictions on Use of Genetic Information

Part Compiler's Comments

Effective Date: This part is effective October 1, 1999.

33-18-901. Definitions. Unless the context indicates otherwise, the following definitions apply to this part:

(1) "Genetic information" means, unless otherwise provided by Public Law 104-191, information derived from genetic testing or medical evaluation to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are scientifically or medically believed to cause a disease, disorder, or syndrome or are associated with a statistically increased risk of developing a disease, disorder, or syndrome that is asymptomatic at the time of testing.

(2) "Genetic testing" or "genetic test" means a test used to diagnose a presymptomatic genetic factor, including analysis of human deoxyribonucleic acid or ribonucleic acid, chromosomes, proteins, or metabolites. The term does not include a routine physical examination or a chemical, blood, or urine analysis, unless conducted or analyzed purposefully or knowingly to obtain genetic information, or a family history.

(3) "Genetic trait" means any medically or scientifically identified genetic factor, known or presumed to be present in the individual or a biological relative but not presently associated with any manifestations of the disorder in the individual, that could cause a disorder or be statistically associated with an increased risk of development of a disorder.

(4) "Group policy" includes:

(a) the group insurance program authorized by Title 2, chapter 18, part 7;

(b) the state employee group insurance program required by Title 2, chapter 18, part 8; and

(c) a self-funded multiple employer welfare arrangement that is not regulated pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

History: En. Sec. 3, Ch. 334, L. 1999.

33-18-902. Requirement for genetic testing — limitations. (1) An insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not require an individual to obtain a genetic test unless the test is otherwise required by law for reasons including but not limited to the following:

(a) to establish parentage;

(b) to determine the presence of metabolic disorders in a newborn by testing conducted pursuant to newborn screening and protocols;

(c) in connection with a criminal investigation or prosecution; or

(d) for remains identification.

(2) This section does not apply to transactions of life, disability income, or long-term care insurance.

History: **En. Sec. 4, Ch. 334, L. 1999.**

33-18-903. Discrimination on basis of genetic traits prohibited. (1) Unless otherwise required by law, an insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not, on the basis of a person's genetic traits:

(a) fail or refuse to accept an application for a policy or certificate of insurance;

(b) fail or refuse to issue a policy or certificate of insurance to an applicant;

(c) cancel a policy or certificate of insurance;

(d) refuse to renew a policy or certificate of insurance;

(e) charge a higher rate or premium for a policy or certificate of insurance; or

(f) offer or provide different terms, conditions, or benefits or place a limitation on coverage under a policy or certificate of insurance.

(2) An insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not underwrite or condition coverage on the basis of:

(a) a requirement or agreement that the individual undergo genetic testing; or

(b) genetic information about a member of the individual's family.

(3) Discrimination may not be made in the fees or commissions of agents or brokers for writing or renewing an individual or group policy of insurance on the basis of an individual's genetic traits.

(4) This section does not apply to transactions of life, disability income, or long-term care insurance.

(5) This section does not prohibit an insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance from discriminating as otherwise allowed by law on the basis of other factors unrelated to genetic traits.

History: **En. Sec. 5, Ch. 334, L. 1999.**

33-18-904. Seeking genetic information for nontherapeutic purposes prohibited. (1) An insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not seek genetic information about an individual for a purpose that is:

(a) unrelated to assessing or managing the individual's current health;

(b) inappropriate in an asymptomatic individual; or

(c) unrelated to research in which a subject is not personally identifiable.

(2) This section does not apply to transactions of life, disability income, or long-term care insurance.

History: **En. Sec. 6, Ch. 334, L. 1999.**

Part 10

Enforcement

33-18-1001. Complaint handling — record. (1) An insurer shall maintain a complete record of all the complaints which it has received since the date of its last examination under 33-1-401. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, and the time it took to process each complaint.

(2) For purposes of this section, "complaint" means any written communication primarily expressing a grievance.

History: **En. 40-3502.2 by Sec. 2, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.2.**

33-18-1002. Power of commissioner to examine insurers. The commissioner may examine and investigate the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this chapter.

History: **En. 40-3502.3 by Sec. 3, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.3.**

33-18-1003. Undefined unfair practices — procedures for determining and restraining. (1) If the commissioner believes that any person engaged in the insurance business is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in this chapter but that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be in the public interest, he shall, after a hearing of which notice of the hearing and of the charges against him are given such person, make a written report of his findings of fact relative to such charges and serve a copy thereof upon such person and any intervenor at the hearing.

(2) If such report charges a violation of this chapter and if such method of competition, act, or practice has not been discontinued, the commissioner may, through the attorney general of this state, at any time after the service of such report cause an action to be instituted to enjoin and restrain such person from engaging in such method, act, or practice. In such action the court may grant a restraining order or injunction upon such terms as may be just, but the people of this state shall not be required to give security before the issuance of any such order or injunction. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript thereof, including all evidence taken and the report and findings, shall be received in evidence in such action.

(3) If the commissioner's report made under subsection (1) above or order on hearing made under 33-18-1004 does not charge a violation of this chapter, then any intervenor in the proceedings may appeal therefrom within the time and in the manner provided in this code for appeals from the commissioner generally.

History: **En. Sec. 217, Ch. 286, L. 1959; R.C.M. 1947, 40-3515.**

Cross-References

Attorney General — duties, 2-15-501.

Injunctions, Title 27, ch. 19.

Hearings by Commissioner, 33-1-701.

Appeals from Commissioner's decision, 33-1-711.

Premium changes and cancellation — property or casualty insurance — unfair trade practices, 33-15-1121.

33-18-1004. Desist orders for prohibited practices. (1) If, after a hearing thereon of which notice of such hearing and of the charges against him were given such person, the commissioner finds that any person in this state has engaged or is engaging in any act or practice defined in or prohibited under this chapter, the commissioner shall order such person to desist from such acts or practices.

(2) Such desist order shall become final upon expiration of the time allowed for appeals from the commissioner's orders if no such appeal is taken or, in event of such an appeal, upon final decision of the court if the court affirms the commissioner's order or dismisses the appeal. An intervenor in such hearing shall have the right to appeal as provided in 33-18-1003(3).

(3) In event of such an appeal, to the extent that the commissioner's order is affirmed, the court shall issue its own order commanding obedience to the terms of the commissioner's order.

(4) No order of the commissioner pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by such order from any other liability, penalty, or forfeiture under law.

(5) This section shall not be deemed to affect or prevent the imposition of any penalty provided by this code or by other law for violation of any other provision of this chapter, whether or not any such hearing is called or held or such desist order issued.

History: En. Sec. 216, Ch. 286, L. 1959; amd. Sec. 7, Ch. 320, L. 1977; R.C.M. 1947, 40-3514.

Cross-References

General penalty — Montana Insurance Code violations, 33-1-104.

Hearings by Commissioner, 33-1-701.

Appeals from Commissioner's orders, 33-1-711.

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

33-18-1005. Penalty for violation of cease and desist orders. (1) Any person who violates a cease and desist order issued pursuant to 33-18-1004 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The total penalty may not exceed a $10,000 aggregate. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county in which the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(2) An action under subsection (1) of this section is not a bar to enforcement of this chapter or rules or orders made under it by injunction or other appropriate remedies.

(3) Moneys collected hereunder shall be deposited in the state general fund.

History: En. 40-3514.1 by Sec. 4, Ch. 320, L. 1977; R.C.M. 1947, 40-3514.1.

Cross-References

Attorney General — duties, 2-15-501.

County Attorneys — duties, 7-4-2716.

Legal actions by state agencies — Attorney General to be notified, 25-1-501.

33-18-1006. Desist orders for prohibited practices — court injunctions. (1) Violations of 33-18-221 through 33-18-224 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred.

History: En. Sec. 5, Ch. 554, L. 1993; amd. Sec. 37, Ch. 472, L. 1999; amd. Sec. 6, Ch. 526, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 472 in (1) substituted "33-18-224" for "33-18-223". Amendment effective October 1, 1999.

Chapter 526 in (1) substituted "33-18-224" for "33-18-223"; inserted (2) providing for court injunctions; and made minor changes in style. Amendment effective October 1, 1999.

CHAPTER 19

INSURANCE INFORMATION AND PRIVACY PROTECTION

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Chapter Cross-References

Consumer reporting agencies, Title 31, ch. 3, part 1.

Part 1

General Provisions

33-19-101. Short title. This chapter may be cited as the "Insurance Information and Privacy Protection Act".

History: En. Sec. 1, Ch. 580, L. 1981.

33-19-102. Purpose. The purpose of this chapter is to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, insurance producers, or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

History: En. Sec. 2, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-103. Scope. (1) The obligations imposed by this chapter apply to those insurance institutions, insurance producers, or insurance-support organizations that, on or after July 1, 1982:

(a) in the case of life, health, or disability insurance:

(i) collect, receive, or maintain information in connection with insurance transactions that pertains to natural persons who are residents of this state; or

(ii) engage in insurance transactions with applicants, individuals, or policyholders who are residents of this state; and

(b) in the case of property or casualty insurance:

(i) collect, receive, or maintain information in connection with insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state; or

(ii) engage in insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state.

(2) The rights granted by this chapter extend to:

(a) in the case of life, health, or disability insurance, the following persons who are residents of this state:

(i) natural persons who are the subject of information collected, received, or maintained in connection with insurance transactions; and

(ii) applicants, individuals, or policyholders who engage in or seek to engage in insurance transactions; and

(b) in the case of property or casualty insurance, the following persons:

(i) natural persons who are the subject of information collected, received, or maintained in connection with insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state; and

(ii) applicants, individuals, or policyholders who engage in or seek to engage in insurance transactions involving policies, contracts, or certificates of insurance delivered, issued for delivery, or renewed in this state.

(3) For the purposes of this section, a person is considered a resident of this state if the person's last-known mailing address, as shown in the records of the insurance institution, insurance producer, or insurance-support organization, is located in this state.

(4) This chapter does not apply to information collected from the public records of a governmental authority and maintained by an insurance institution or its representatives for the purpose of insuring the title to real property located in this state.

History: En. Sec. 3, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-104. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means a person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, utilization review, peer review activities, grievance procedures, and internal administration of compliance and policyholder service functions.

(11) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health

maintenance organizations, and health service corporations as defined in 33-30-101.

(b) Insurance institution does not include insurance producers or insurance-support organizations.

(12) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(13) (a) "Insurance-support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.

(14) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than for business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(15) "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.

(16) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

(17) "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech-language pathologist.

(18) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, medical claims history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(19) "Person" means a natural person, corporation, association, partnership, or other legal entity.

(20) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal

information includes an individual's name and address and medical record information but does not include privileged information.

(21) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

(22) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone else;

(b) pretends to represent a person not in fact being represented;

(c) misrepresents the true purpose of the interview; or

(d) refuses to provide identification upon request.

(23) "Privileged information" means any individually identifiable information that:

(a) relates to a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.

(24) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

(25) (a) "Separate, written authorization" means an individual's written authorization that is:

(i) given to the recipient of personal or privileged information that has been disclosed pursuant to 33-19-306(3) through (17); and

(ii) separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization pursuant to 33-19-204.

(b) The term does not include the insurance institution, insurance producer, or insurance-support organization that discloses personal or privileged information pursuant to 33-19-306(3) through (17).

(26) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(27) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state.

History: En. Sec. 4, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 149, Ch. 42, L. 1997; amd. Sec. 1, Ch. 258, L. 1997; amd. Sec. 1, Ch. 212, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 212 inserted definition of insurance function; in definition of medical record information in (a) inserted "medical claims history"; inserted definition of separate, written authorization; and made minor changes in style. Amendment effective January 1, 2000.

Part 2

Information Gathering

33-19-201. Pretext interviews prohibited — exception. (1) Except as provided in subsection (2), an insurance institution, insurance producer, or insurance-support organization may not use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction.

(2) A pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person about whom the information relates for the purpose of investigating a claim when based upon specific information available for review by the commissioner that there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with the claim.

History: En. Sec. 5, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Fraud, 28-2-404 through 28-2-406.

33-19-202. Notice of insurance information practices. (1) An insurance institution or insurance producer shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:

(a) in the case of an application for insurance, a notice must be provided no later than:

(i) at the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records; or

(ii) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;

(b) in the case of a policy renewal, a notice must be provided no later than the policy renewal date, except that notice is not required in connection with a policy renewal if:

(i) personal information is collected only from the policyholder or from public records; or

(ii) a notice meeting the requirements of this section has been given within the previous 24 months; or

(c) in the case of a policy reinstatement or change in insurance benefits, a notice must be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that notice is not required if personal information is collected only from the policyholder or from public records.

(2) The notice must be in writing and must state:

(a) whether personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect the information;

(c) the types of disclosures identified in subsections (3), (4), (5), (6), (7), (10), (12), and (14) of 33-19-306 and the circumstances under which the disclosures may be made without prior authorization. However, only those circumstances that occur with such frequency as to indicate a general business practice must be described.

(d) a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised; and

(e) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

(3) In lieu of the notice prescribed in subsection (2), the insurance institution or insurance producer may provide an abbreviated notice informing the applicant or policyholder that:

(a) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) the information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

(c) a right of access and correction exists with respect to all personal information collected; and

(d) the notice prescribed in subsection (2) must be furnished to the applicant or policyholder upon request.

(4) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer authorized to act on its behalf.

History: En. Sec. 6, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 2, Ch. 212, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 212 in (2)(c) deleted references to subsections (13) and (15) of 33-19-306 and inserted reference to subsection (14) of that section; and made minor changes in style. Amendment effective January 1, 2000.

33-19-203. Marketing and research surveys. An insurance institution or insurance producer shall clearly specify the questions that are designed to obtain information from an individual in connection with an insurance transaction solely for marketing or research purposes.

History: En. Sec. 7, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-204. Content, use, and disclosure of authorization forms. Notwithstanding any other provision of law of this state, an insurance institution, insurance producer, except as provided in subsection (10), or insurance-support organization may not collect personal or privileged information about an individual in connection with insurance transactions except in conformance with a form or statement that authorizes the disclosure of personal or privileged information about the individual to the insurance institution, insurance producer, or insurance-support organization and the form or statement:

(1) is written in plain language;

(2) is dated and signed by the individual or a person authorized to act on behalf of the individual;

(3) specifies the types of persons authorized to disclose information about the individual;

(4) specifies the nature of the information authorized to be disclosed;

(5) names the insurance institution or insurance producer and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed;

(6) specifies the purposes for which the information is collected;

(7) specifies the length of time that the authorization remains valid, which may be no longer than:

(a) in the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement, or a request for change in policy benefits:

(i) 30 months from the date the authorization is signed if the application or request involves life, health, or disability insurance;

(ii) 1 year from the date the authorization is signed if the application or request involves property or casualty insurance;

(b) in the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:

(i) the term of coverage of the policy if the claim is for a health insurance benefit;

(ii) the duration of the claim if the claim is not for a health insurance benefit; and

(8) advises the individual or a person authorized to act on behalf of the individual that, subject to the exception provided in subsection (9), the individual or the individual's authorized representative is entitled to receive a copy of the authorization form and, upon request, a record of any subsequent disclosures of personal or privileged information pursuant to 33-19-306(2) through (17) that must include:

(a) the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information during the preceding 3 years;

(b) the date of the receipt or examination; and

(c) to the extent practicable, a description of the information disclosed.

(9) The provisions of subsection (8) do not require disclosure to the individual or person authorized to act on behalf of the individual when the disclosure has been made to a person whose identity could not be discovered under the applicable rules of civil procedure.

(10) An individual insurance producer may collect personal information from an applicant before obtaining a signed authorization form or statement from the applicant. However, the individual insurance producer may not disclose the personal information to any person before obtaining a signed authorization form or statement from the applicant.

History: En. Sec. 8, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 3, Ch. 212, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 212 in introduction inserted exception clause, substituted "collect personal or privileged information about an individual" for "utilize as its disclosure authorization form", and inserted "except in conformance with"; in (2) inserted "and signed by the individual or a person authorized to act on behalf of the individual"; in (8) inserted "subject to the exception provided in subsection (9)" and inserted "and, upon request, a record of any subsequent disclosures of personal or privileged information pursuant to 33-19-306(2) through (17) that must include"; inserted (8)(a) through (8)(c) providing for information about persons receiving or examining information during the preceding 3 years, the date of the receipt or examination, and a description of the disclosed information; inserted (9) providing that subsection (8) does not require disclosure when the disclosure has been made to a person whose identity could not be discovered under applicable rules of civil procedure; and inserted (10) allowing an insurance producer to collect information from an applicant before obtaining an authorization from the applicant and forbidding disclosure to a person before obtaining an authorization. Amendment effective January 1, 2000.

33-19-205. Investigative consumer reports. (1) An insurance institution, insurance producer, or insurance-support organization may not prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement, or a change in insurance benefits unless the insurance institution or insurance producer informs the individual:

(a) that he may request to be interviewed in connection with the preparation of the investigative consumer report; and

(b) that upon a request pursuant to 33-19-301, he is entitled to receive a copy of the investigative consumer report.

(2) If an investigative consumer report is to be prepared by an insurance institution or insurance producer, the insurance institution or insurance producer

shall institute reasonable procedures to conduct a personal interview requested by an individual.

(3) If an investigative consumer report is to be prepared by an insurance-support organization, the insurance institution or insurance producer desiring such report shall inform the insurance-support organization whether a personal interview has been requested by the individual. The insurance-support organization shall institute reasonable procedures to conduct such interview, if requested.

History: En. Sec. 9, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Part 3

Disclosure of Information

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

33-19-301. Access to recorded personal information. (1) If an individual, after proper identification, submits a written request to an insurance institution, insurance producer, or insurance-support organization for access to recorded personal information about the individual that is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, insurance producer, or insurance-support organization, the insurance institution, insurance producer, or insurance-support organization shall, within 30 business days from the date such request is received:

(a) inform the individual of the nature and substance of the recorded personal information in writing, by telephone, or by other oral communication, whichever the insurance institution, insurance producer, or insurance-support organization prefers;

(b) permit the individual to see and copy, in person, the recorded personal information pertaining to him or to obtain a copy of the recorded personal information by mail, whichever the individual prefers. If the recorded personal information is in coded form, an accurate translation in plain language must be provided in writing.

(c) disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, insurance producer, or insurance-support organization has disclosed the personal information within 2 years prior to the request and, if the identity is not recorded, the names of those insurance institutions, insurance producers, insurance-support organizations, or other persons to whom such information is normally disclosed; and

(d) provide the individual with a summary of the procedures he may use to request correction, amendment, or deletion of recorded personal information.

(2) Personal information provided pursuant to subsection (1) must identify the source of the information if such source is an institutional source.

(3) Medical record information supplied by a medical care institution or medical professional and requested under subsection (1), together with the identity of the medical professional or medical care institution that provided the information, shall be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution, insurance producer, or insurance-support organization prefers. If it elects to disclose the information to a medical professional designated by the

individual, the insurance institution, insurance producer, or insurance-support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional. The medical professional may review and interpret the information and at the request of the affected individual shall consult with the affected individual.

(4) Except for personal information provided under 33-19-303, an insurance institution, insurance producer, or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

(5) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (1), an insurance institution, insurance producer, or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

(6) The rights granted to individuals in this section extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, insurance producer, or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(7) For the purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency".

History: En. Sec. 10, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-302. Correction, amendment, or deletion of recorded personal information. (1) Within 30 business days from the date of receipt of a written request from an individual to correct, amend, or delete any recorded personal information in its possession about the individual, an insurance institution, insurance producer, or insurance-support organization shall either:

(a) correct, amend, or delete the portion of the recorded personal information in dispute; or

(b) notify the individual of:

(i) its refusal to make the correction, amendment, or deletion;

(ii) the reasons for the refusal; and

(iii) the individual's right to file a statement as provided in subsection (3).

(2) If the insurance institution, insurance producer, or insurance-support organization corrects, amends, or deletes recorded personal information in accordance with subsection (1)(a), the insurance institution, insurance producer, or insurance-support organization shall notify the individual in writing about the action that it has taken and furnish the correction, amendment, or fact of deletion to:

(a) any person specifically designated by the individual who may have, within the preceding 2 years, received recorded personal information about the individual;

(b) any insurance-support organization whose primary source of personal information is insurance institutions if the insurance-support organization has systematically received recorded personal information from the insurance institution within the preceding 7 years, but the correction, amendment, or fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded personal information about the individual; and

(c) any insurance-support organization that furnished the personal information that has been corrected, amended, or deleted.

(3) Whenever an individual disagrees with an insurance institution's, insurance producer's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information, the individual may file with the insurance institution, insurance producer, or insurance-support organization:

(a) a concise statement setting forth what the individual thinks is the correct, relevant, or fair information; and

(b) a concise statement of the reasons why the individual disagrees with the insurance institution's, insurance producer's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information.

(4) If an individual files either statement described in subsection (3), the insurance institution, insurance producer, or insurance-support organization shall:

(a) file the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of the individual's statement and have access to it;

(b) in any subsequent disclosure by the insurance institution, insurance producer, or insurance-support organization of the recorded personal information that is the subject of disagreement, clearly identify the matter in dispute and provide the individual's statement along with the recorded personal information being disclosed; and

(c) furnish the statement to the persons in the manner specified in subsection (2).

(5) The commissioner may review a refusal by an insurance institution, insurance producer, or insurance-support organization to correct, amend, or delete recorded personal information in order to determine if the information is correct. The commissioner may order the insurance institution, insurance producer, or insurance-support organization to correct, amend, or delete information that the commissioner determines is erroneous in an individual's recorded information file.

(6) The rights granted individuals by this section extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, insurance producer, or insurance-support organization in connection with an insurance transaction. The rights granted to natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(7) For the purposes of this section, the term "insurance-support organization" does not include a consumer reporting agency.

History: En. Sec. 11, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 2, Ch. 258, L. 1997.

33-19-303. Reasons for adverse underwriting decisions. (1) If an adverse underwriting decision is made, the insurance institution or insurance producer responsible for the decision shall:

(a) either provide the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise the person that upon written request, the person may receive the specific reason or reasons in writing; and

(b) provide the applicant, policyholder, or individual proposed for coverage with a summary of the rights established under subsection (2) and 33-19-301 and 33-19-302.

(2) If a written request is received within 90 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder, or individual proposed for coverage, the insurance institution or insurance producer shall within 21 business days from the date of receipt of the written request furnish the person:

(a) the specific reason or reasons for the adverse underwriting decision, in writing, if the information was not initially furnished in writing pursuant to subsection (1)(a);

(b) the specific items of personal and privileged information that support those reasons; however:

(i) the insurance institution or insurance producer is not required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure; and

(ii) specific items of medical record information supplied by a medical care institution or medical professional must be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution or insurance producer prefers; and

(c) the names and addresses of the institutional sources that supplied the specific items of information pursuant to subsection (2)(b), except that the identity of any medical professional or medical care institution must be disclosed either directly to the individual or to the designated medical professional, whichever the insurance institution or insurance producer prefers.

(3) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer that is authorized to act on its behalf.

(4) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subsection (1) may be given orally but must be made in writing at the request of the applicant, policyholder, or individual.

History: En. Sec. 12, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 3, Ch. 258, L. 1997.

Cross-References

Requirements on users of consumer reports, 31-3-131.

33-19-304. Information concerning previous adverse underwriting decisions. An insurance institution, insurance producer, or insurance-support organization may not seek information in connection with an insurance transaction concerning:

(1) any previous adverse underwriting decision experienced by an individual unless the inquiry also requests the reasons for any previous adverse underwriting decision and the individual is advised of the source of the information; or

(2) any previous insurance coverage obtained by an individual through a residual market mechanism unless the inquiry also requests the reasons why insurance coverage was previously obtained through a residual market mechanism and the individual is advised of the source of information.

History: En. Sec. 13, Ch. 580, L. 1981; amd. Sec. 8, Ch. 518, L. 1983; amd. Sec. 1, Ch. 713, L. 1989.

33-19-305. Previous adverse underwriting decisions. An insurance institution or insurance producer may not base an adverse underwriting decision in whole or in part:

(1) on the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism, but an insurance institution or insurance producer may base an adverse underwriting decision on further information obtained from an insurance

institution or insurance producer responsible for a previous adverse underwriting decision;

(2) on personal information received from an insurance-support organization whose primary source of information is insurance institutions, but an insurance institution or insurance producer may base an adverse underwriting decision on further personal information obtained as the result of information received from such insurance-support organization.

History: **En. Sec. 14, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.**

33-19-306. Disclosure limitations and conditions. (1) Except as provided in this section, an insurance institution, insurance producer, or insurance-support organization may not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual but:

(a) if the authorization is submitted by another insurance institution, insurance producer, or insurance-support organization, the authorization must meet the requirements of 33-19-204; or

(b) if the authorization is submitted by a person other than an insurance institution, insurance producer, or insurance-support organization, the authorization must be:

(i) dated;

(ii) signed by the individual;

(iii) sufficient to identify the nature of the information to be disclosed and the person to whom the information is to be disclosed; and

(iv) obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection.

(3) Disclosure may be made to a person other than an insurance institution, insurance producer, or insurance-support organization, provided that the disclosure is limited to that which is reasonably necessary:

(a) to enable the person to perform an insurance function for the disclosing insurance institution, insurance producer, or insurance-support organization and the person agrees not to further disclose the information without the individual's separate, written authorization; or

(b) to enable the person that has agreed not to further disclose the information without the individual's separate, written authorization to provide information to the disclosing insurance institution, insurance producer, or insurance-support organization for the purpose of:

(i) determining an individual's eligibility for an insurance benefit or payment; or

(ii) detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction.

(4) Disclosure may be made to an insurance institution, insurance producer, insurance-support organization, or self-insurer that has agreed not to further disclose the information without the individual's separate, written authorization if the information disclosed is limited to that which is reasonably necessary:

(a) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(b) for either the disclosing or receiving insurance institution, insurance producer, or insurance-support organization to perform its insurance function in connection with an insurance transaction involving the individual.

(5) Disclosure may be made to a medical care institution or medical professional of that information reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware; or

(c) conducting an operations or services audit.

(6) Disclosure may be made to an insurance regulatory authority that agrees not to further disclose the information without the individual's separate, written authorization.

(7) Disclosure may be made to a law enforcement or other government authority:

(a) to protect the interests of the insurance institution, insurance producer, or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it; or

(b) if the insurance institution, insurance producer, or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) (a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies, provided that:

(i) no individual is identified in any actuarial or research report;

(ii) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(iii) the actuarial or research organization agrees not to further disclose the information without the individual's separate, written authorization.

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the insurance institution, insurance producer, or insurance-support organization, if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only information is disclosed that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information without the individual's separate, written authorization.

(12) (a) Disclosure that is limited to that which is reasonably necessary may be made to any affiliate whose only use of the information will be in connection with an audit of the insurance institution or insurance producer if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(b) Disclosure of personal information that is limited to an individual's name, age, sex, family composition, address, telephone number, occupation, and avocations may be made to any affiliate whose only use of the information is in connection with the marketing of insurance or financial products if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(13) Except for medical record information, disclosure may be made by a consumer reporting agency to a person other than an insurance institution or insurance producer.

(14) Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or insurance producer's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization.

(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority as required by federal or state law or for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

(18) The commissioner may, after notice and hearing, adopt rules to carry out the provisions of this section. The rules may not define the recordkeeping requirements regarding authorized disclosures of personal or privileged information pursuant to subsections (2) through (17) but may define the requirements of any agreement obtained by an insurance institution, insurance producer, or insurance-support organization regarding disclosures of personal or privileged information.

History: En. Sec. 15, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 4, Ch. 212, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 212 inserted (2)(b)(iii) that read: "sufficient to identify the nature of the information to be disclosed and the person to whom the information is to be disclosed"; in (3) after "disclosure is" inserted "limited to that which is"; in (3)(a) after "perform" substituted "an" for "a business, professional, or", inserted "separate", and at end deleted "unless the further disclosure: (i) would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance support organization; or

(ii) is reasonably necessary for such person to perform its function for the disclosing insurance institution, insurance producer, or insurance support organization"; in (3)(b) and (4) inserted "that has agreed not to further disclose the information without the individual's separate, written authorization"; in (6) inserted "that agrees not to further disclose the information without the individual's separate, written authorization"; in (8) and (9) inserted "that is limited to that which is reasonably necessary"; in (10) at beginning substituted "(a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary" for "Disclosure"; in (10)(a)(iii) inserted "further" and substituted "without the individual's separate, written authorization" for "unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance support organization"; inserted (10)(b) allowing disclosure for health research that is subject to review board approval and federal law or for epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect patients' identity"; in (11)(b) inserted "further" and substituted "without the individual's separate, written authorization" for "unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance support organization"; deleted former (12) that read: "(12) Disclosure may be made to a person whose only use of such information will be in connection with the marketing of a product or service, if:

(a) no medical record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed;

(b) the individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that he does not want the information disclosed; and

(c) the person receiving the information agrees not to use it except in connection with the marketing of a product or service"; in (12)(a) inserted "that is limited to that which is reasonably necessary" and after "insurance producer" deleted "or the marketing of an insurance product or service"; inserted (12)(b) providing that disclosure limited to name, age, sex, family composition, address, telephone number, occupation, and avocations may be made to an affiliate that agrees to use the information only in connection with marketing; in (13) at beginning inserted exception clause; in (14) at end inserted "and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization"; in (15) inserted "that is limited to that which is reasonably necessary" and at end inserted "if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization"; in (16) inserted "that is limited to that which is reasonably necessary" and inserted "as required by federal or state law or"; in (17) inserted "that is limited to that which is reasonably necessary"; inserted (18) allowing the commissioner to adopt rules to carry out this section; and made minor changes in style. Amendment effective January 1, 2000.

Part 4

Enforcement

33-19-401. Power of the commissioner. (1) The commissioner has the power to examine and investigate the affairs of every insurance institution or insurance producer doing business in this state to determine whether the insurance institution or insurance producer has been or is engaged in any conduct in violation of this chapter.

(2) The commissioner has the power to examine and investigate the affairs of every insurance-support organization acting on behalf of an insurance institution or insurance producer that either transacts business in this state or transacts business outside this state which has an effect on a person residing in this state in order to determine whether such insurance-support organization has been or is engaged in any conduct in violation of this chapter.

History: En. Sec. 16, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-402. Hearings. The commissioner shall hold a hearing whenever he has reason to believe that an insurance institution, insurance producer, or insurance-support organization has been or is engaged in conduct in this state that violates this chapter or if the commissioner believes that an insurance-support organization has been or is engaged in conduct outside this state which has an effect on a person residing in this state and which violates this chapter. Hearings conducted under this section are governed by Title 2, chapter 4 and Title 33, chapter 1, part 7.

History: En. Sec. 17, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-403. Service of process — insurance-support organizations. For the purpose of this chapter, an insurance-support organization transacting business outside this state that has an effect on a person residing in this state is considered to have appointed the commissioner to accept service of process on its behalf. The commissioner shall mail a copy of the notice by registered mail to the insurance-support organization at its last known principal place of business. The return postcard receipt for such mailing is sufficient proof that the same was properly mailed by the commissioner.

History: En. Sec. 18, Ch. 580, L. 1981.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

33-19-404. Hearing determination. (1) If, after a hearing pursuant to 33-19-402, the commissioner determines that the insurance institution, insurance producer, or insurance-support organization charged has engaged in conduct or practices in violation of this chapter, the commissioner shall reduce his findings and conclusions to writing and shall issue and cause them to be served upon the insurance institution, insurance producer, or insurance-support organization as provided by law.

(2) If, after a hearing pursuant to 33-19-402, the commissioner determines that the insurance institution, insurance producer, or insurance-support organization charged has not engaged in conduct or practices in violation of this chapter, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. The report shall be served upon the insurance institution, insurance producer, or insurance-support organization charged and upon the person or persons if any, whose rights under this chapter were allegedly violated, in the manner provided by law for service of agency orders.

History: En. Sec. 19, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-405. Civil penalties. If a hearing pursuant to 33-19-402 results in the finding of a knowing violation of this chapter, the commissioner may order payment of a civil penalty of not more than $500 for each violation but not to exceed $10,000 in the aggregate for multiple violations.

History: En. Sec. 20, Ch. 580, L. 1981; amd. Sec. 4, Ch. 101, L. 1985.

33-19-406. Judicial review of orders and reports. Any person subject to an order of the commissioner under 33-1-706 or 33-19-405 or any person whose rights under this chapter were allegedly violated may obtain a review of any order or report of the commissioner as provided by 33-1-711.

History: En. Sec. 21, Ch. 580, L. 1981; amd. Sec. 5, Ch. 101, L. 1985.

33-19-407. Individual remedies. (1) If any insurance institution, insurance producer, or insurance-support organization fails to comply with 33-19-301, 33-19-302, or 33-19-303 with respect to the rights granted under those sections, any person whose rights are violated may apply to the district court of this state or any other court of competent jurisdiction for appropriate equitable relief.

(2) An insurance institution, insurance producer, or insurance-support organization that discloses information in violation of 33-19-306 is liable for damages sustained by the individual to whom the information relates. However, an individual is not entitled to a monetary award which exceeds the actual damages sustained by the individual as a result of a violation of 33-19-306.

(3) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

(4) An action under this section must be brought within 2 years from the date the alleged violation is or should have been discovered.

(5) Except as specifically provided in this section, there is no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of this chapter.

History: En. Sec. 22, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-408. Immunity. A cause of action or claim for relief in the nature of defamation, invasion of privacy, or negligence does not arise against any person for disclosing personal or privileged information in accordance with this chapter, nor does such a cause of action or claim for relief arise against any person for furnishing personal or privileged information to an insurance institution, insurance producer, or insurance-support organization. However, this section does not provide immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

History: En. Sec. 23, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

33-19-409. Obtaining information under false pretenses. Any person who knowingly and willfully obtains information about an individual from an insurance institution, insurance producer, or insurance-support organization under false pretenses shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

History: En. Sec. 24, Ch. 580, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.

CHAPTER 20

LIFE INSURANCE

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Chapter Cross-References

Police protective association — salary deduction for group life insurance, 7-32-4122.

Deferred compensation — used to purchase life insurance and annuities, 19-50-102.

Assignments for benefit of creditors — exemption for general assignment, 31-2-227.

Denial of insurance — credit report — consumer's rights, 31-3-131.

Life insurance — definition, 33-1-208.

Discrimination prohibited — nongender insurance law, 49-2-309.

Disposition of unclaimed property, Title 70, ch. 9.

Physicians' liens — exemptions, 71-3-1118.

Homicide — effect on life insurance, 72-2-813.

Part 1

Policy Provisions

Part Cross-References

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

Living will declaration — not required as condition for insurance coverage, 50-9-205.

Living wills — effect on insurance, 50-9-205.

33-20-101. Scope. (1) Except as provided in subsection (2), parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

(2) Sections 33-20-114, 33-20-131, and 33-20-150 also apply to group life insurance and group annuities.

History: En. Sec. 295, Ch. 286, L. 1959; R.C.M. 1947, 40-3801; amd. Sec. 149, Ch. 575, L. 1981; amd. Sec. 6, Ch. 699, L. 1991; amd. Sec. 22, Ch. 451, L. 1993; amd. Sec. 28, Ch. 531, L. 1997; amd. Sec. 2, Ch. 76, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 76 in (2) inserted reference to 33-20-150; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Accidental death incidental to casualty insurance, 33-1-206.

Reinsurance — general provisions, Title 33, ch. 2, part 12.

Group life insurance, Title 33, ch. 20, parts 10 through 12.

33-20-102. Industrial life insurance defined. For the purposes of this code, industrial life insurance is that form of life insurance written under policies of face amount of $2,000 or less bearing the words "industrial policy" imprinted on the face thereof as part of the descriptive matter and under which premiums are payable monthly or more often.

History: En. Sec. 296, Ch. 286, L. 1959; amd. Sec. 1, Ch. 30, L. 1969; R.C.M. 1947, 40-3802.

Cross-References

Attachment of application as evidence — exception, 33-15-402.

33-20-103. Standard provisions required — exceptions. (1) No policy of life insurance other than group and pure endowments with or without return of premiums or of premiums and interest shall be delivered or issued for delivery in this state unless it contains in substance all of the applicable provisions as required by 33-20-104 through 33-20-108, 33-20-110 through 33-20-116, and 33-20-131.

(2) This section shall not apply to annuity contracts or to any provision of a life insurance policy, or contract supplemental thereto, relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(3) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

History: En. Sec. 297, Ch. 286, L. 1959; R.C.M. 1947, 40-3803; amd. Sec. 83, Ch. 370, L. 1987.

33-20-104. Grace period. There shall be a provision that a grace period of 30 days or, at the option of the insurer, of 1 month of not less than 30 days or of 4 weeks in the case of industrial life insurance policies, the premiums for which are payable more frequently than monthly, shall be allowed within which the payment of any premium after the first may be made, during which period of grace the policy shall continue in full force; but if a claim arises under the policy during such period of grace, the amount of any premium due or overdue may be deducted from the policy proceeds.

History: En. Sec. 298, Ch. 286, L. 1959; R.C.M. 1947, 40-3804.

Cross-References

Computation of time — which days counted, 1-1-306.

33-20-105. Incontestability. There shall be a provision that the policy, exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means, shall be incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of 2 years from its date of issue.

History: En. Sec. 299, Ch. 286, L. 1959; R.C.M. 1947, 40-3805.

33-20-106. Entire contract. There shall be a provision that the policy, or the policy and the application therefor if a copy of such application is endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties and, if the application is so made a part of the policy, that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

History: En. Sec. 300, Ch. 286, L. 1959; R.C.M. 1947, 40-3806.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Fraud, 28-2-404 through 28-2-406.

Interpretation of written contracts — statute of frauds, Title 28, ch. 2, part 9.

Representations and warranties — applications other than life insurance, 33-15-403.

33-20-107. Misstatement of age. There shall be a provision that if the age of the insured or of any other person whose age is considered in determining the premium has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages.

History: En. Sec. 301, Ch. 286, L. 1959; R.C.M. 1947, 40-3807.

33-20-108. Dividends. (1) There shall be a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy, provided the policy is in force and all premiums to that date are paid.

(2) Except as hereinafter provided, any dividend becoming payable shall at the option of the party entitled to elect such option be either:

(a) payable in cash; or

(b) applied to any one of such other dividend options as may be provided by the policy.

(3) If any such other dividend options are provided, the policy shall further state which option shall be automatically effective if such party shall not have elected some other option. If the policy specifies a period within which such other dividend option may be elected, such period shall be not less than 30 days following the date on which such dividend is due and payable.

(4) The annually apportioned dividend shall be deemed to be payable in cash within the meaning of subsection (2)(a) above even though the policy provides that payment of such dividend is to be deferred for a specified period, provided such period does not exceed 6 years from the date of apportionment and that interest will be added to such dividend at a specified rate.

(5) If a participating policy provides that the benefit under any paid-up nonforfeiture provision is to be participating, it may provide that any divisible surplus becoming payable or apportioned while the insurance is in force under such nonforfeiture provision shall be applied in the manner set forth in the policy.

(6) In participating industrial life insurance policies, in lieu of the provision required in subsections (1) through (5) above, there shall be a provision that, beginning not later than the end of the fifth policy year, the policy shall participate annually in the divisible surplus, if any, in the manner set forth in the policy.

History: En. Sec. 302, Ch. 286, L. 1959; R.C.M. 1947, 40-3808.

Cross-References

Standard nonforfeiture law — life insurance, Title 33, ch. 20, part 2.

Standard nonforfeiture law — individual deferred annuities, Title 33, ch. 20, part 5.

33-20-109. Renumbered 33-20-131 by Code Commissioner, 1985.

33-20-110. Table of values. There shall be a table showing in figures the loan value, if required under 33-20-131, and the cash surrender values and nonforfeiture benefits in accordance with 33-20-202(1)(e), either during the first 20 policy years or during the term of the policy, whichever is shorter.

History: En. Sec. 304, Ch. 286, L. 1959; R.C.M. 1947, 40-3810.

33-20-111. Table of installments. In case the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall be a table showing the amounts of the guaranteed installments.

History: En. Sec. 305, Ch. 286, L. 1959; R.C.M. 1947, 40-3811.

33-20-112. Reinstatement. There shall be a provision that the policy will be reinstated at any time within 3 years, or 2 years in the case of industrial life insurance policies, from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears, and the payment or reinstatement of any other indebtedness to the insurer upon the policy, with interest on all premiums in arrears at a rate not exceeding 6% per annum compounded annually and with interest on any indebtedness at a rate as provided in 33-20-132 through 33-20-136, unless:

(1) the policy has been surrendered for its cash surrender value;
(2) its cash surrender value has been exhausted; or
(3) the paid-up term insurance, if any, has expired.

History: En. Sec. 306, Ch. 286, L. 1959; R.C.M. 1947, 40-3812; amd. Sec. 7, Ch. 191, L. 1985.

33-20-113. Payment of premiums. There shall be a provision relative to the payment of premiums.

History: En. Sec. 307, Ch. 286, L. 1959; R.C.M. 1947, 40-3813.

33-20-114. Payment of claims — interest. (1) There shall be a provision, which may be made by endorsement, that when a claim is made upon the death of the insured, settlement shall be made upon receipt of proof of death and, at the insurer's option, surrender of the policy and/or proof of the interest of the claimant.

(2) There shall be a provision, which may be made by endorsement, that settlement be made within 60 days of receipt of proof of death and that if settlement is made after the first 30 days, the settlement shall include interest from the 30th day until settlement. Interest shall be paid at the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district at the time of proof of death. The settlement period and interest provisions of this subsection apply to all claims upon deaths filed with an insurer after October 1, 1985, regardless of whether those provisions are included in the policy.

History: En. Sec. 308, Ch. 286, L. 1959; R.C.M. 1947, 40-3814; amd. Sec. 1, Ch. 469, L. 1985.

Cross-References

Unfair trade practice — delay caused by requiring multiple proofs of loss, 33-18-201.

Administrative penalty for failure to pay claims promptly, 33-18-232 through 33-18-235.

33-20-115. Beneficiary — industrial policies. (1) An industrial life insurance policy shall have the name of the beneficiary designated thereon with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(2) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured.

(3) The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than 30 days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor or dies before the insured or is not legally competent to give a valid release, then the insurer may make any payment thereunder to the personal representative of the insured or to any relative of the insured by blood or legal adoption or connection by marriage or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary or by reason of having incurred expense for the maintenance, medical attention, or burial of the insured.

(4) The policy may also include a similar provision applicable to any other payment due under the policy.

(5) The provisions of 33-20-114(2) shall be incorporated into an industrial life insurance policy and are applicable as set out in that subsection.

History: En. Sec. 309, Ch. 286, L. 1959; R.C.M. 1947, 40-3815; amd. Sec. 150, Ch. 575, L. 1981; amd. Sec. 2, Ch. 469, L. 1985.

33-20-116. Title. There shall be a title on the policy, briefly describing the same.

History: En. Sec. 310, Ch. 286, L. 1959; R.C.M. 1947, 40-3816.

33-20-117. Nonforfeiture rights — policies issued before operative date. (1) This section shall apply only to policies of life insurance issued prior to the operative date of 33-20-213.

(2) In event of default in payment of any premium due on any policy, provided not less than three full years' premiums shall have been paid, there shall be secured to the insured, without action on his part, either paid-up or extended insurance as specified in the policy, the net value of which shall be at least equal to the entire net reserve held by the insurer of such policy, less 2 ½% of the amount insured by the policy and dividend additions, if any, and less any outstanding indebtedness to the insurer on the policy at time of default. There shall be secured to the insured the right to surrender the policy to the insurer at its home office within 1 month after date of default for cash value otherwise available for the purchase of the paid-up or extended insurance as aforesaid.

History: En. Sec. 326, Ch. 286, L. 1959; R.C.M. 1947, 40-3832.

33-20-118. Contestability — excluded or restricted coverage. A clause in any policy of life insurance providing that such policy shall be incontestable after a specified period shall preclude only a contest of the validity of the policy and shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause.

History: En. Sec. 311, Ch. 286, L. 1959; R.C.M. 1947, 40-3817.

33-20-119. Incontestability — limitation on liability after reinstatement of life insurance or annuity. (1) A reinstated policy of life insurance or annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

(2) When any life insurance policy or annuity contract is reinstated, such reinstated policy or contract may exclude or restrict liability to the same extent that such liability might have been or was excluded or restricted when the policy or contract was originally issued, and such exclusion or restriction shall be effective from the date of reinstatement.

History: **En. Sec. 322, Ch. 286, L. 1959; R.C.M. 1947, 40-3828.**

33-20-120. Policy settlements — holding proceeds — indebtedness deducted from proceeds. (1) Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy, in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate the funds so held but may hold them as part of its general assets.

(2) In determining the amount due under any life insurance policy heretofore or hereafter issued, deduction may be made of:

(a) any unpaid premiums or installments thereof for the current policy year due under the terms of the policy; and

(b) the amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid.

History: **En. Secs. 323, 324, Ch. 286, L. 1959; R.C.M. 1947, 40-3829, 40-3830.**

33-20-121. Prohibited provisions — limitations on liability. (1) A policy of life insurance may not be delivered or issued for delivery in this state if it contains a provision:

(a) for a period shorter than that provided by statute within which an action at law or in equity may be commenced on the policy; or

(b) that excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified in the policy in the event of death:

(i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of an act or hazard of war or action or of service in the military, naval, or air forces or in civilian forces auxiliary to those military forces or from any cause while a member of military, naval, or air forces of a country at war, declared or undeclared, or of a country engaged in military action;

(ii) as a result of aviation, air travel, or flight;

(iii) as a result of a specified hazardous occupation or occupations;

(iv) while the insured is a resident outside the continental United States and Canada; or

(v) within 2 years from the date of issue of the policy as a result of suicide. If a life insurance policy contains a dependent rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

(2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide that in the event of death under the circumstances to which the exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method on the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits or, if the policy does not provide for nonforfeiture benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy or by any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

(3) This section does not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) This section does not prohibit a provision that in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section.

History: En. Sec. 320, Ch. 286, L. 1959; R.C.M. 1947, 40-3826; amd. Sec. 28, Ch. 198, L. 1979; amd. Sec. 7, Ch. 699, L. 1991; amd. Sec. 23, Ch. 451, L. 1993; amd. Sec. 6, Ch. 490, L. 1997; amd. Sec. 38, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1)(b)(v) after "suicide" deleted "while committed pursuant to 53-21-127"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Contracts that violate policy of law — exemption from responsibility, 28-2-702.

33-20-122. Prohibited provisions — industrial life insurance. No policy of industrial life insurance shall contain any of the following provisions:

(1) a provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer;

(2) a provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical, or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within 2 years prior to the issuance of the policy, received institutional, hospital, medical, or surgical treatment or attention and if the insured or claimant under the policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk;

(3) a provision giving the insurer the right to declare the policy void because the insured has been rejected for insurance, unless such right be conditioned upon a showing by the insurer that knowledge of such rejection would have led to a refusal by the insurer to make such contract.

History: En. Sec. 321, Ch. 286, L. 1959; R.C.M. 1947, 40-3827.

Cross-References

Contracts that violate policy of law — exemption from responsibility, 28-2-702.

33-20-123. Prohibited policy plans — life insurance policies or annuity contracts. (1) No insurer shall issue for delivery or deliver in this state any life insurance policy or annuity contract issued under any plan for the segregation of policyholders into mathematical groups and providing benefits for a surviving policyholder of a group arising out of the death of another policyholder of such group or under any other similar plan.

(2) No insurer shall issue for delivery or deliver in this state any life insurance policy or annuity contract providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise. This provision shall not be deemed to prohibit the payment or allowance of regular annual dividends or "savings" under participating forms of policies or contracts or prohibit the annual distribution to policyholders or beneficiaries of sums representing in part gains to the insurer from lapses, surrenders, or mortality either in general or as resulting from particular classifications of policies.

History: En. Sec. 327, Ch. 286, L. 1959; R.C.M. 1947, 40-3833.

Cross-References

Contracts that violate policy of law — exemption from responsibility, 28-2-702.

33-20-124. Policy provisions — conformity with state statutes. Each policy regulated by this part must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: **En. Sec. 22, Ch. 798, L. 1991.**

33-20-125 and 33-20-126 reserved.

33-20-127. Life insurance policy with long-term care provision or accelerated benefits provision — summary required. At the time of policy delivery, a summary must be delivered to the insured for an individual life insurance policy that provides long-term care benefits or accelerated benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the summary upon the applicant's request but no later than the time of policy delivery. In addition to complying with all applicable requirements, the summary must also include:

(1) an explanation of how the long-term care benefits or accelerated benefits interact with other components of the policy, including deductions from death benefits;

(2) an illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits, if any, for each covered person;

(3) any exclusions, reductions, and limitations of long-term care benefits and accelerated benefits; and

(4) if applicable to the policy type:

(a) a disclosure of the effects of exercising other rights under the policy;

(b) a disclosure of guaranties related to long-term care costs of insurance charges; and

(c) current and projected maximum lifetime benefits.

History: **En. Sec. 3, Ch. 152, L. 1991; amd. Sec. 24, Ch. 451, L. 1993.**

33-20-128. Life insurance policy paying long-term benefits — monthly report. When a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report must be provided to the policyholder. The report must include the following information for the month for which the report is issued:

(1) the amount of long-term care benefits paid out during the month;

(2) an explanation of any changes in the policy, including without limitation death benefits or cash values, resulting from long-term care benefits having been paid out; and

(3) the amount of long-term care benefits existing or remaining.

History: **En. Sec. 4, Ch. 152, L. 1991; amd. Sec. 2, Ch. 416, L. 1997.**

33-20-129 and 33-20-130 reserved.

33-20-131. Policy loan or certificate loan. (1) Subject to the provisions of 33-20-101(2) and except as provided in 33-20-132 through 33-20-136, there must be a provision that after 3 full years' premiums have been paid and after the policy or certificate has a cash surrender value and while a premium is not in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy or certificate and on the sole security of the policy or certificate, at a specified rate of interest not exceeding 6% a year, an amount equal to or, at the option of the party entitled to the loan, less than the loan value of the policy or certificate. The commissioner may authorize a rate of interest in excess of 6%, but not in excess of 8% a year (or 7.4% if payable annually in advance), for policies or certificates issued on or after January 1, 1980, if the insurer provides adequate written certification that the holders of the policies will benefit fully from the increased earnings of the insurer resulting from the use of an interest rate in excess of the 6% per annum, such as from higher interest income to the company on policy or certificate loans, higher investment yield resulting from a reduction in policy or certificate loans because of the higher policy or certificate loan interest rate, and any additional income to the company resulting from the use of the higher interest rate in any manner. These benefits to the policyholder must be reflected through higher dividends, lower premiums, or both. The loan value of the policy must be at least equal to the cash surrender value at the end of the then current policy or certificate year, provided that the insurer may deduct, either from the loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining the cash surrender value (including interest then accrued but not due), an unpaid balance of the premium for the current policy or certificate year, and interest on the loan to the end of the current policy or certificate year unless the policyowner by written notice to the insurer elects to defer payment of interest until it has accrued. The policy or certificate may also provide that if interest on indebtedness is not paid when due, it must be added to the existing indebtedness and must bear interest at the same rate, and that if and when the total indebtedness on the policy or certificate, including interest due or accrued, equals or exceeds the amount of its loan value, the policy or certificate terminates and is void. The policy or certificate must reserve to the insurer the right to defer the granting of a loan, other than for the payment of a premium to the insurer, for 6 months after application for the loan. The policy or certificate, at the insurer's option, may provide for an automatic premium loan, subject to an election of the party entitled to elect.

(2) This section does not apply to term policies or to term insurance benefits provided by rider or supplemental policy provisions or to industrial life insurance policies.

History: En. Sec. 303, Ch. 286, L. 1959; R.C.M. 1947, 40-3809; amd. Sec. 1, Ch. 179, L. 1979; amd. Sec. 6, Ch. 191, L. 1985; Sec. 33-20-109, MCA 1983; redes. 33-20-131 by Code Commissioner, 1985; amd. Sec. 8, Ch. 699, L. 1991.

33-20-132. Variable policy loan interest rates — purpose. The purpose of 33-20-132 through 33-20-136 is to permit and set guidelines for life insurers to include in life insurance policies issued after October 1, 1985, a provision for periodic adjustment of policy loan interest rates.

History: En. Sec. 1, Ch. 191, L. 1985.

33-20-133. Variable interest rates — exclusions from application. The provisions of 33-20-132 through 33-20-136 do not apply to:

(1) term policies;

(2) term insurance benefits provided by rider or supplemental policy provisions; or

(3) industrial life insurance policies except as provided in 33-20-112.

History: En. Sec. 2, Ch. 191, L. 1985.

33-20-134. Variable interest rates — published monthly average defined. For purposes of 33-20-132 through 33-20-136, the "published monthly average" means:

(1) Moody's corporate bond yield average—monthly average corporates, as published by Moody's investors service, incorporated; or

(2) in the event that Moody's corporate bond yield average—monthly average corporates is no longer published, a substantially similar average, established by rule of the commissioner.

History: En. Sec. 3, Ch. 191, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-20-135. Variable interest rates on policy loans. (1) (a) Life insurance policies issued on or after October 1, 1985, may have a provision permitting policy loan interest rates as follows:

(i) a maximum interest rate of not more than 8% a year; or

(ii) an adjustable maximum interest rate established from time to time by the life insurer as permitted by 33-20-132 through 33-20-136.

(b) A life insurer is not permitted to issue policies containing variable rates of interest on policy loans under subsection (1)(a)(ii) unless the insurer also makes available policies, which may or may not be on the same plan of insurance, with fixed rates of interest on policy loans under subsection (1)(a)(i).

(2) The rate of interest charged on a policy loan made under subsection (1)(a)(ii) may not exceed the greater of:

(a) the published monthly average for the calendar month ending 2 months before the date on which the rate is determined; or

(b) the rate used to compute the cash surrender values under the policy during the applicable period plus 1% a year.

(3) If the maximum rate of interest is determined pursuant to subsection (1)(a)(ii), the policy must contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(4) The maximum rate for each policy must be determined at regular intervals that must occur at least once every 12 months, but may not occur more frequently than once in any 3-month period. At the intervals specified in the policy, the rate being charged:

(a) may be increased whenever an increase as determined under subsection (2) would increase the rate by 0.5% or more a year;

(b) must be reduced whenever a reduction as determined under subsection (2) would decrease the rate by 0.5% or more a year.

(5) The life insurer shall:

(a) notify the policyholder of the initial rate of interest on the loan at the time a cash loan is made;

(b) notify the policyholder, with respect to premium loans, of the initial rate of interest on the loan as soon as practical after making the initial loan. Notice does not have to be given to the policyholder when a further premium loan is added, except as provided in subsection (5)(c).

(c) send reasonable advance notice of any increase in the rate to policyholders with loans; and

(d) include in the notices required by this subsection (5) the substance of subsection (1) and the frequency of rate determinations as provided in subsection (3).

(6) The policy may provide that if interest on any indebtedness is not paid when due, the interest will be added to the existing indebtedness and will bear interest at the same rate as the indebtedness.

(7) The loan value of the policy must be determined in accordance with the provisions of 33-20-131, but no policy may be terminated in a policy year solely as a result of a change in the interest rate during that policy year. The life insurer shall maintain coverage during that policy year until the time at which the policy would otherwise have terminated if there had been no interest rate change during that policy year.

(8) The substance of the pertinent provisions of subsections (1) and (3) must be set forth in the policies to which they apply.

(9) For purposes of this section, the following definitions apply:

(a) "Policy" includes certificates issued by a fraternal benefit society and annuity contracts that provide for policy loans.

(b) "Policy loan" includes any premium loan made under a policy used to pay one or more premiums that were not paid to the life insurer as they became due. The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after the lapse of a policy.

(c) "Policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.

(10) No other provision of law applies to policy loan interest rates unless it is made specifically applicable to such rates.

History: En. Sec. 4, Ch. 191, L. 1985.

33-20-136. Variable interest rates — applicability to policies issued before October 1985. The provisions of 33-20-132 through 33-20-135 do not apply to any insurance contract issued before October 1, 1985, unless the policyholder agrees in writing to the applicability of such provisions.

History: En. Sec. 5, Ch. 191, L. 1985.

33-20-137 through 33-20-140 reserved.

33-20-141. Notice required for cancellation. No insurer may cancel a life insurance policy or annuity for nonpayment of premiums until the insurer has mailed or delivered to the named insured and policyowner, where they are not the same, at the last-known post office address shown in the records of the company one written notice of cancellation in addition to any billing statement, stating the date the cancellation will become effective, which may not be less than 30 days after the date of mailing or delivery of the notice. Said 30 days shall run concurrently with the grace period required by 33-20-104.

History: En. Sec. 1, Ch. 723, L. 1985.

33-20-142. Contents of notice — proof — limitation on recovery — exemptions. (1) (a) The notice of cancellation shall state:

(i) the amount of the premium, installment, or interest due on such policy;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state that unless the premium or other sums are paid to the company or its insurance producer, the policy will lapse or be forfeited, except as to any nonforfeiture options provided for by a life insurance policy.

(2) "Policyowner", as used in this section, means the owner of the policy or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) The affidavit of any responsible officer, clerk, or insurance producer of the insurance company authorized to mail the notice that it is the standard practice of the company to mail to policyowners the notice required by this section is prima facie evidence that the notice has been duly given.

(4) No action may be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from the due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) Section 33-20-141 does not apply to:

(a) group or group-type policies;

(b) industrial life or industrial disability policies; or

(c) policies upon which premiums are payable monthly or at more frequent intervals.

History: En. Sec. 2, Ch. 723, L. 1985; amd. Sec. 1, Ch. 713, L. 1989.

33-20-143 through 33-20-149 reserved.

33-20-150. Life insurance policy and sales illustrations — annuity disclosure — rules. (1) (a) The commissioner shall adopt rules providing for and regulating life insurance policy illustrations, annuity disclosure, and sales illustrations that are marketed, issued, or issued for delivery to Montana residents.

(b) The rules must specify any types of life insurance or annuities that are exempt from the provisions of the rules.

(2) The rules must be designed to:

(a) protect life insurance and annuity consumers;

(b) foster consumer education;

(c) improve consumers' ability to understand the basic features of life insurance policies and annuities; and

(d) improve consumers' ability to select the most appropriate plan of life insurance or annuity.

(3) Rules that are adopted by the commissioner may not go beyond the scope of, or contain material differences from, the national association of insurance commissioners' life insurance illustrations, annuity disclosure, and sales model regulations.

(4) After the effective date of rules that are adopted pursuant to this section, a group or individual life insurance policy, certificate, or annuity may not be marketed, issued, or issued for delivery to a Montana resident unless the policy, certificate, or annuity conforms to the rules that are adopted pursuant to this section.

History: En. Sec. 1, Ch. 76, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

33-20-151. Repealed. Sec. 134, Ch. 494, L. 1993.

History: En. Sec. 30, Ch. 582, L. 1989.

Part 2

Standard Nonforfeiture Law Life Insurance

Part Cross-References

Nonforfeiture rights — applicable to policies issued prior to operative date, 33-20-117.

33-20-201. Short title. This part shall be known as the "Standard Nonforfeiture Law for Life Insurance".

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(1); amd. Sec. 5, Ch. 346, L. 1979.

33-20-202. Nonforfeiture provisions. (1) In the case of policies issued on or after the operative date of this part as defined in 33-20-213, no policy of life insurance, except as set forth in 33-20-212, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements specified in this section and are essentially in compliance with 33-20-210:

(a) that in the event of default in any premium payment after premiums have been paid for at least 1 full year, the insurer will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be specified in this part. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(b) that upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least 3 full years in the case of ordinary insurance and 5 full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be specified in this part;

(c) that a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default;

(d) that if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be specified in this part;

(e) for a policy that has on a basis guaranteed in the policy unscheduled changes in benefits or premiums or that provides an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. For each other policy a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

(f) a statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state;

(g) an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy;

(h) if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and

(i) a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(2) Any of the provisions or portions thereof set forth in subsections (1)(a) through (1)(i) which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The insurer shall reserve the right to defer the payment of any cash surrender value for a period of 6 months after demand therefor with surrender of the policy.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(2), (3); amd. Sec. 1, Ch. 498, L. 1983.

33-20-203. Cash surrender value — paid-up nonforfeiture benefit — life. (1) Except as provided in subsection (2), any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by 33-20-202, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

(a) the then present value of the adjusted premiums as defined in 33-20-204 through 33-20-208 corresponding to premiums which would have fallen due on and after such anniversary; and

(b) the amount of any indebtedness to the insurer on account of or secured by the policy.

(2) For any policy issued on or after the operative date of 33-20-208 that provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subsection (1) is an amount not less than the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in subsection (1) for a policy that provides only the benefits otherwise provided by such rider or supplemental policy provision.

(3) Any cash surrender value available within 30 days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefits, whether or not required by 33-20-202, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(4) Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this part in the absence of the conditions that premiums shall have been paid for at least a specified period.

(5) For any family policy issued on or after the operative date of 33-20-208 that defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse reaches 71 years of age, the cash surrender value referred to in subsection (1) is an amount not less than the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in subsection (1) for a policy that provides only the benefits otherwise provided by such term insurance on the life of the spouse.

History: **En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(4), (5); amd. Sec. 2, Ch. 498, L. 1983.**

33-20-204. Adjusted premium. (1) This section does not apply to policies issued on or after the operative date of 33-20-208.

(2) (a) Except as provided in subsection (3), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(i) the then present value of the future guaranteed benefits provided for by the policy;

(ii) 2% of the amount of the insurance if the insurance be uniform in amount or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with the duration of the policy;

(iii) 40% of the adjusted premium for the first policy year;

(iv) 25% of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

(b) In applying the percentages specified in subsections (iii) and (iv) above, no adjusted premiums shall be deemed to exceed 4% of the amount of insurance or uniform amount equivalent thereto.

(c) Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the provisions of the policy, the date of inception of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy. The date of issue of a policy for the purposes of this subsection shall be the date as of which the rated age of the insured is determined.

(d) (i) In the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of the preceding subsections (a) and (b) shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy.

(ii) In the case of a policy for a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

(3) (a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance.

(b) The foregoing items (a)(i) and (a)(ii) being calculated separately and as specified in subsection (2) except that, for the purposes of (ii), (iii), and (iv) of subsection (2), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (a)(ii) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a)(i) of this subsection.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(6), (7), (7-a); amd. Sec. 3, Ch. 498, L. 1983.

33-20-205. Calculation — mortality table — rates of interest. Except as otherwise provided in 33-20-206 and 33-20-207:

(1) All adjusted premiums and present values referred to in this part shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table.

(2) For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table.

(3) All calculations shall be made on the basis of the rate of interest, not exceeding 3 ½% per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits.

(4) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130% of the rates of mortality according to such applicable table.

(5) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8).

33-20-206. Mortality tables — policies issued after operative date. (1) This section does not apply to ordinary policies issued on or after the operative date of 33-20-208.

(2) In the case of ordinary policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of the commissioner's 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that:

(a) such rate of interest shall not exceed 3 ½% per annum, except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to July 1, 1979, and a rate of interest not exceeding 5 ½% a year may be used for policies issued on or after July 1, 1979;

(b) for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than 6 years younger than the actual age of the insured;

(c) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 extended term insurance table;

(d) for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(3) After July 1, 1961, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the ordinary policies thereafter issued by

such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1966.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8-a); amd. Sec. 6, Ch. 346, L. 1979; amd. Sec. 4, Ch. 498, L. 1983.

33-20-207. Industrial policies — mortality tables. (1) This section does not apply to industrial policies issued on or after the operative date of 33-20-208.

(2) In the case of industrial policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of commissioner's 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that:

(a) such rate of interest shall not exceed 3 1/2% per annum except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to July 1, 1979, and a rate of interest not exceeding 5 1/2% a year may be used for policies issued on or after July 1, 1979;

(b) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1961 industrial extended term insurance table;

(c) for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(3) After February 22, 1965, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1968.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8-b); amd. Sec. 7, Ch. 346, L. 1979; amd. Sec. 5, Ch. 498, L. 1983.

33-20-208. Mortality tables — interest rate adjusted premiums. (1) (a) This section applies to all policies issued on or after the operative date of this section. Except as provided in subsection (7), the adjusted premiums for any policy are calculated on an annual basis and must be such a uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums is equal to the sum of:

(i) the then present value of the future guaranteed benefits provided for by the policy;

(ii) 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(iii) 125% of the nonforfeiture net level premium as provided in subsection (2). No nonforfeiture net level premium is considered to exceed 4% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years.

(b) The date of issue of a policy for the purpose of this subsection is the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium is equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(3) For policies that have on a basis guaranteed in the policy unscheduled changes in benefits or premiums or that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values are initially calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values must be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(4) Except as otherwise provided in subsection (7), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of:

(a) the sum of:

(i) the then present value of the then future guaranteed benefits provided for by the policy; and

(ii) the additional expense allowance, if any; over

(b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, is the sum of:

(a) 1% of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years subsequent to the change, over the average amount of insurance prior to the change at the beginning of each of the first 10 policy years subsequent to the time of the most recent previous change or, if there has been no previous change, the date of issue of the policy; and

(b) 125% of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium is equal to the result obtained by dividing the product of subsection (a) by the product of subsection (b):

(a) (i) the nonforfeiture net level premium applicable prior to the change multiplied by the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(ii) the present value of the increase in future guaranteed benefits provided for by the policy;

(b) the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this section for a policy issued on a substandard basis that provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy

may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(8) Except as provided below, all adjusted premiums and present values referred to in this part are for policies of ordinary insurance calculated on the basis of the commissioner's 1980 standard ordinary mortality table or, at the election of the insurer for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors. All adjusted premiums and present values for policies of industrial insurance are calculated on the basis of the commissioner's 1961 standard industrial mortality table. All adjusted premiums and present values for all policies issued in a particular calendar year are calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as provided in this subsection for policies issued in that calendar year; with the following exceptions and conditions:

(a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as provided in this subsection for policies issued in the immediately preceding calendar year.

(b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by 33-20-202, is calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(c) An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioner's 1961 industrial extended term insurance table for policies of industrial insurance.

(e) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the tables set forth in this subsection (8).

(f) Any ordinary mortality tables adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1980 standard ordinary mortality table with or without 10-year select mortality factors or for the commissioner's 1980 extended term insurance table.

(g) Any industrial mortality tables adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term insurance table.

(9) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year must be equal to 125% of the calendar year statutory valuation interest rate for such policy as defined in the standard valuation law, Title 33, chapter 2, part 5, rounded to the nearer 1/4 of 1%.

(10) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form that involves only a change in the interest rate or mortality

table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.

(11) After October 1, 1983, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date, before January 1, 1989, which is the operative date of this section for such insurer. If an insurer makes no such election, the operative date of this section for such insurer is January 1, 1989.

History: **En. Sec. 6, Ch. 498, L. 1983.**

33-20-209. Determination of nonforfeiture values for special plans. For a plan of life insurance that provides for future premium determination the amounts of which are to be determined by the insurer based on then estimates of future experience or for a plan of life insurance that is of such a nature that minimum values cannot be determined by the methods described in 33-20-204 through 33-20-208:

(1) the commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by 33-20-204 through 33-20-208;

(2) the commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(3) the cash surrender values and paid-up nonforfeiture benefits provided by such plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this part, as determined by rules promulgated by the commissioner.

History: **En. Sec. 7, Ch. 498, L. 1983.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-20-210. Additional rules for calculating cash surrender values. (1) This section, in addition to all other applicable sections of this chapter, applies to all policies issued on or after January 1, 1987. Any cash surrender value available under the policy upon default in a premium payment due on any policy anniversary is an amount that does not differ by more than 2/10 of 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years subtracted from the sum of:

(a) the greater of zero and the basic cash value specified in subsection (2); and

(b) the present value of any existing paid-up additions less the amount of any indebtedness to the insurer under the policy.

(2) The basic cash value is equal to the present value, on such anniversary, of the future guaranteed benefits that would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the insurer, if there had been no default less the then present value of the nonforfeiture factors, as provided in subsection (3), corresponding to premiums that would have fallen due on and after such anniversary date. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in 33-20-203 or 33-20-204, whichever is applicable, are the same as the effects specified in 33-20-203 or 33-20-204, whichever is applicable, on the cash surrender values defined in that section.

(3) The nonforfeiture factor for each policy year is an amount equal to a percentage of the adjusted premium for the policy year, as defined in 33-20-204 or 33-20-208, whichever is applicable. Except as is required by subsection (4), the percentage:

(a) must be the same percentage for each policy year between the second policy anniversary date and the later of the fifth policy anniversary date and the first policy anniversary date at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least 2/10 of 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(b) must be such that no percentage after the later of the two policy anniversary dates specified in subsection (3)(a) applies to less than 5 consecutive policy years.

(4) No basic cash value may be less than the value that would be obtained if the adjusted premiums for the policy, as provided in 33-20-204 or 33-20-208, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(5) Adjusted premiums and present values referred to in this section must, for a particular policy, be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this part. The cash surrender values referred to in this section include any endowment benefits provided for by the policy.

(6) A cash surrender value available other than upon default in a premium payment due on a policy anniversary date and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment are determined consistently with provisions specified for determining the analogous minimum amounts in 33-20-202 through 33-20-204, 33-20-208, and 33-20-211. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in 33-20-211(4) must conform with the principles of this section.

History: En. Sec. 9, Ch. 498, L. 1983.

33-20-211. Calculation of values — other requisites. (1) Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary.

(2) All values referred to in 33-20-203 through 33-20-208 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death.

(3) The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions.

(4) Notwithstanding the provisions of subsections (1) and (3) of 33-20-203, additional benefits payable under the following circumstances shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this part, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits:

(a) in the event of death or dismemberment by accident or accidental means;

(b) in the event of total and permanent disability;

(c) as reversionary annuity or deferred reversionary annuity benefits;

(d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this part would not apply;

(e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, is uniform in amount after the child's age is 1, and has not become paid up by reason of the death of a parent of the child; and

(f) as other policy benefits additional to life insurance and endowment benefits and premiums for all such additional benefits.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(9); amd. Sec. 8, Ch. 498, L. 1983.

33-20-212. Exceptions. (1) This part does not apply to:

(a) reinsurance;

(b) group insurance;

(c) a pure endowment;

(d) an annuity or reversionary annuity contract;

(e) a term policy of uniform amount that provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of 20 years or less expiring before age 71 for which uniform premiums are payable during the entire term of the policy;

(f) a term policy of decreasing amount that provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in 33-20-204 through 33-20-208, is less than the adjusted premiums so calculated on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;

(g) a policy which provides no guaranteed nonforfeiture or endowment benefits for which the cash surrender value, if any, or present value of any paid-up nonforfeiture benefit at the beginning of any policy year, calculated as specified in 33-20-203 through 33-20-208, does not exceed 2.5% of the amount of insurance at the beginning of the same policy year;

(h) a policy that is delivered outside this state through an insurance producer or other representative of the insurer issuing the policy.

(2) For purposes of subsection (1), the age at expiry for a joint term life insurance policy is the age at expiry of the oldest life.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(10); amd. Sec. 10, Ch. 498, L. 1983; amd. Sec. 1, Ch. 713, L. 1989.

33-20-213. Operative date. After July 1, 1945, any insurer could have filed with the state auditor a written notice of its election to comply with the provisions of this part, except 33-20-206 and 33-20-207, after a specified date before January 1, 1948, with respect to the policies specified in the notice. After the filing of such notice, then upon such specified date (which shall be the operative date for such insurer with respect to such policies), this part, except 33-20-206 and 33-20-207, shall have become operative with respect to the policies specified in such notice thereafter issued by such insurer. As to all of its policies and contracts with respect to which an insurer makes no such election, the operative date of this part, except 33-20-206 and 33-20-207, with respect to such policies and contracts for such insurer is January 1, 1948.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(11); amd. Sec. 24, Ch. 198, L. 1979.

Cross-References

Contracts prior to operative date, 33-2-522.

Contracts on or after operative date of 33-20-213, 33-2-523.

Part 3

Annuity Contract Provisions

33-20-301. Standard provisions — annuity and pure endowment contracts. (1) No annuity or pure endowment contract, other than reversionary annuities, survivorship annuities, or group annuities and except as stated herein, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in 33-20-302 through 33-20-307. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

(2) This section shall not apply to contracts for deferred annuities included in or upon the lives of beneficiaries under life insurance policies.

History: En. Sec. 312, Ch. 286, L. 1959; R.C.M. 1947, 40-3818.

33-20-302. Grace period. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that there shall be a period of grace of 1 month, but not less than 30 days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer to an interest charge thereon at a rate to be specified in the contract but not exceeding 6% per annum for the number of days of grace elapsing before such payment, during which period of grace the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

History: En. Sec. 313, Ch. 286, L. 1959; R.C.M. 1947, 40-3819.

Cross-References

Computation of time — which days counted, 1-1-306.

33-20-303. Incontestability. If any statements other than those relating to age and identity are required as a condition to issuing an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, and subject to 33-20-305, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of 2 years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer such contract may also except any provisions relative to benefits in the event of disability and any provisions which grant insurance specifically against death by accident or accidental means.

History: En. Sec. 314, Ch. 286, L. 1959; R.C.M. 1947, 40-3820; amd. Sec. 9, Ch. 798, L. 1991.

33-20-304. Entire contract. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract shall constitute the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.

History: En. Sec. 315, Ch. 286, L. 1959; R.C.M. 1947, 40-3821.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Interpretation of written contracts — statute of frauds, Title 28, ch. 2, part 9.

33-20-305. Misstatement of age. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding 6% per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract.

History: En. Sec. 316, Ch. 286, L. 1959; R.C.M. 1947, 40-3822; amd. Sec. 10, Ch. 798, L. 1991.

33-20-306. Dividends. If an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract.

History: En. Sec. 317, Ch. 286, L. 1959; R.C.M. 1947, 40-3823.

33-20-307. Reinstatement. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract may be reinstated at any time within 1 year from the default in making stipulated payments to the insurer, unless the cash surrender value had been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated with interest thereon at a rate to be specified in the contract but not exceeding 6% per annum payable annually. In cases where applicable the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.

History: En. Sec. 318, Ch. 286, L. 1959; R.C.M. 1947, 40-3824.

33-20-308. Annuity information. The commissioner shall promulgate rules prescribing information that must be delivered to prospective annuitants at the time of sale. The rules must address the following:

(1) the manner of delivery of the information;

(2) when the information must be delivered;

(3) by whom the information is to be delivered; and

(4) the contents of the information, including:

(a) the type of annuity being sold; and

(b) the settlement options available under the annuity contract.

History: En. Sec. 1, Ch. 260, L. 1997.

Part 4

Reversionary Annuity Contract Provisions

33-20-401. Standard provisions. (1) Except as stated herein, no contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the following provisions:

(a) Any such reversionary annuity contract shall contain the provisions specified in 33-20-302 through 33-20-306, except that under 33-20-302 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue payment in lieu of providing for deduction of such payments from an amount payable upon settlement under the contract.

(b) In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within 3 years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding 6% per annum compounded annually.

(2) This section shall not apply to group annuities or to annuities included in life insurance policies, and any of such provisions not applicable to single premium annuities shall not to that extent be incorporated therein.

History: En. Sec. 319, Ch. 286, L. 1959; R.C.M. 1947, 40-3825.

Part 5

Standard Nonforfeiture Law Individual Deferred Annuities

33-20-501. Short title. This part shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities".

History: En. Sec. 8, Ch. 346, L. 1979.

33-20-502. Application. This part does not apply to any reinsurance, group annuity purchased under a retirement plan, or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity or to any contract which is delivered outside this state through an insurance producer or other representative of the company issuing the contract.

History: En. Sec. 9, Ch. 346, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

33-20-503. Nonforfeiture provisions. In the case of contracts issued on or after the operative date of this part as defined in 33-20-513, no contract of annuity except as stated in 33-20-502 shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) that upon cessation of payment of considerations under a contract the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in 33-20-506 through 33-20-509 and 33-20-511;

(2) that if a contract provides for a lump-sum settlement at maturity or at any other time, than upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in 33-20-506, 33-20-507, 33-20-509, and 33-20-511. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of 6 months after demand therefor with surrender of the contract.

(3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits;

(4) a statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness

to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

History: **En. Sec. 10, Ch. 346, L. 1979.**

33-20-504. Exception. Notwithstanding the requirements of 33-20-503, any deferred annuity contract may provide that if no consideration has been received under a contract for a period of 2 full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from consideration paid prior to such period would be less than $20 monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

History: **En. Sec. 11, Ch. 346, L. 1979.**

33-20-505. Minimum nonforfeiture amounts. (1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(2) (a) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of 3% a year of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3% a year and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by existing additional amounts credited by the company to the contract.

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year. The percentages of net consideration shall be 65% of the net consideration for the first contract year and 87 1/2% of the net consideration for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%.

(3) With respect to contracts providing for fixed schedule consideration, minimum nonforfeiture amounts shall be calculated on the assumption that consideration is paid annually in advance and shall be defined as for contracts with flexible payments of consideration which are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65% of the net consideration for the first contract year plus 22 1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(b) The annual contract charge shall be the lesser of $30 or 10% of the gross annual consideration.

(4) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible payments of consideration except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90% and the net consideration shall be the gross consideration less a contract charge of $75.

History: **En. Sec. 12, Ch. 346, L. 1979.**

33-20-506. Present value to equal minimum nonforfeiture amount. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

History: **En. Sec. 13, Ch. 346, L. 1979.**

33-20-507. Cash surrender benefits. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. No cash surrender benefit may be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

History: **En. Sec. 14, Ch. 346, L. 1979.**

33-20-508. Paid-up annuity benefits. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for or changed to a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, the present value of a paid-up annuity benefit may not be less than the minimum nonforfeiture amount at that time.

History: **En. Sec. 15, Ch. 346, L. 1979.**

33-20-509. Maturity date. For the purpose of determining the benefits calculated under 33-20-507 and 33-20-508, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date is the latest date for which election is permitted by the contract but may not be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later.

History: **En. Sec. 16, Ch. 346, L. 1979.**

33-20-510. Statement of noninclusion of certain death benefits. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

History: **En. Sec. 17, Ch. 346, L. 1979.**

33-20-511. Adjusted benefit. Any paid-up annuity, cash surrender, or death benefits available at any time other than on the contract anniversary under any contract with fixed scheduled consideration shall be calculated with allowance for the lapse of time and the payment of any scheduled consideration beyond the beginning of the contract year in which cessation of payment of consideration under the contract occurs.

History: En. Sec. 18, Ch. 346, L. 1979.

33-20-512. Calculation of benefits — special benefits excluded. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross consideration paid with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of 33-20-506 through 33-20-509 and 33-20-511, additional benefits payable in the event of total and permanent disability or as reversionary annuity or deferred reversionary annuity benefits or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amount paid-up annuity, cash surrender, and death benefits.

History: En. Sec. 19, Ch. 346, L. 1979.

33-20-513. Operative date. After July 1, 1979, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before July 1, 1981. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be July 1, 1981.

History: En. Sec. 20, Ch. 346, L. 1979.

Part 6

Variable Contracts

Part Cross-References

Contracts — generally, Title 28, ch. 2.
Interpretation of contracts, Title 28, ch. 3.
Domestic insurer — definition, 33-1-201.
Life insurance — definition, 33-1-208.

33-20-601. Short title. This part may be cited as the "Montana Variable Contract Law".

History: En. Sec. 1, Ch. 112, L. 1989.

33-20-602. Powers of commissioner. Except as provided in Title 30, chapter 10, parts 1 through 3, the commissioner has sole authority to regulate the issuance and sale of variable contracts and to adopt rules to carry out the purposes and provisions of this part.

History: En. Sec. 5, Ch. 112, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-20-603. Separate accounts for life insurance or annuities. (1) Subject to the provisions of subsection (2), a life insurer may establish one or more separate accounts and may allocate to those accounts the amounts necessary to provide for life insurance or annuities and benefits incidental to the life insurance or annuities, payable in fixed or variable amounts, or both. The amounts allocated to the accounts may include without limitation proceeds applied under optional modes of settlement or under dividend options.

(2) Separate accounts for life insurance or annuities established under the provisions of subsection (1) are subject to the following:

(a) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account must be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(b) Except as provided for reserves for guaranteed benefits and funds in subsection (2)(c):

(i) amounts allocated to a separate account and accumulations on the separate account may be invested and reinvested in any class of investment authorized under chapter 12 if limitations under 33-12-208 or 33-12-308 on investments in stocks are not applicable;

(ii) the investments in the separate account or accounts may not be considered in applying the investment limitations otherwise applicable to the investments of the insurer.

(c) Except with the approval of the commissioner and under conditions relating to investments and other prescribed matters that recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to amount and duration and for funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.

(d) Unless otherwise approved by the commissioner, assets allocated to a separate account must be valued at their market value on the date of valuation or, if there is no readily available market, as provided under the terms of the contract or the rules or other written agreement applicable to that separate account; however, unless otherwise approved by the commissioner, the portion, if any, of the assets of that separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (2)(c) must be valued in accordance with the laws and rules otherwise applicable to the insurer's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this part must be owned by the insurer, and the insurer may not be or hold itself out to be a trustee with respect to those amounts. If and to the extent provided under applicable contracts, that portion of the assets of a separate account equal to the reserves and other contract liabilities with respect to the account are not chargeable with liabilities arising out of any other business the insurer may conduct.

(f) (i) A sale, exchange, or other transfer of assets may not be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(A) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; or

(B) the transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value and the transfer of securities is approved by the commissioner.

(ii) The commissioner may approve other transfers among these accounts if, in the commissioner's opinion, transfers would not be inequitable.

(g) To the extent an insurer considers it necessary to comply with any applicable federal or state laws, the insurer, with respect to any separate account, including without limitation any separate account that is a management investment company or a unit investment trust account, may provide, for persons having an interest in the account, appropriate voting and other rights and special procedures for the conduct of the business of that account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business of that account.

History: En. Sec. 2, Ch. 112, L. 1989; amd. Sec. 25, Ch. 451, L. 1993; amd. Sec. 46, Ch. 304, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 304 in (2)(b)(i) substituted reference to chapter 12 for reference to chapter 2, part 8, and substituted "33-12-208 or 33-12-308" for "33-2-806". Amendment effective July 1, 1999.

33-20-604. Contract to contain statement of essential features. A contract providing benefits payable in variable amounts delivered or issued for delivery in this state must contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of the variable benefits. A contract under which the benefits vary to reflect investment experience, including a group contract and a certificate evidencing the variable benefits issued thereunder, must state that the dollar amount will vary and must contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

History: En. Sec. 3, Ch. 112, L. 1989.

Cross-References

Insurance contracts — generally, Title 33, ch. 15.

33-20-605. Requirements for doing business. (1) No insurer may deliver or issue for delivery within this state a variable contract unless the insurer is authorized to transact life insurance or annuity business in this state and the commissioner is satisfied that its condition or method of operation in connection with the issuance of variable contracts will not render its operation hazardous to the public or its policyholders in this state. In making such a determination, the commissioner must consider, among other things:

(a) the history and financial condition of the insurer;

(b) the character, responsibility, and fitness of the officers and directors of the insurer; and

(c) the laws and regulations under which the insurer is authorized in the state of domicile to issue variable contracts. For this purpose, the state of entry of an alien insurer is its place of domicile.

(2) The commissioner may consider an insurer to have met the provisions of this section if:

(a) the insurer is a subsidiary of an authorized life insurer or is affiliated with an authorized life insurer through common management or ownership; and

(b) either it, the parent, or the affiliated insurer meets the requirements of this section.

History: En. Sec. 4, Ch. 112, L. 1989.

33-20-606. Variable contracts to meet insurance contract requirements. (1) Except for 33-15-321 through 33-15-329, 33-20-302, and 33-20-307 for variable annuity contracts and 33-20-104, 33-20-111, 33-20-112, and 33-20-201 through 33-20-213 for variable life insurance policies and as otherwise provided in this part, all pertinent provisions of Title 33 and other laws relating to insurance apply to separate accounts and their related policies and contracts.

(2) Any individual variable life insurance contract or any individual variable annuity contract delivered or issued for delivery in this state must contain grace and reinstatement provisions appropriate to the contract. Any individual variable life insurance contract must contain nonforfeiture provisions appropriate to such a contract.

(3) An insurer shall file with the commissioner a copy of a final prospectus, dated and effective, before it issues or delivers an individual variable life insurance contract or an individual variable annuity contract in this state.

(4) The reserve liability for any variable contract must be established in accordance with actuarial procedures that recognize the variable nature of benefits provided and mortality guarantees.

History: En. Sec. 6, Ch. 112, L. 1989.

Parts 7 through 9 reserved

Part 10

General Requirements for Group Life

33-20-1001. Group contracts required to meet group requirements. (1) No life insurance policy shall be delivered in this state insuring the lives of more than one individual unless to one of the groups as provided for in 33-20-1101 through 33-20-1106 and unless in compliance with the other applicable provisions of parts 10 through 12 of this chapter.

(2) Subsection (1) above shall not apply to life insurance policies insuring only individuals:

(a) related by blood, marriage, or legal adoption;

(b) having a common interest through ownership of a business enterprise or a substantial legal interest or equity therein and who are actively engaged in the management thereof; or

(c) otherwise having an insurable interest in each other's lives.

History: En. Sec. 328, Ch. 286, L. 1959; R.C.M. 1947, 40-3901; amd. Sec. 151, Ch. 575, L. 1981.

33-20-1002. Employee life insurance defined. "Employee life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where such policies are issued on the lives of not less than five employees at date of issue. Premiums for such policies shall be paid by the employer or the trustee of a fund established by the employer either wholly from the employer's funds or funds contributed by him or partly from such funds and partly from funds contributed by the insured employees.

History: En. Sec. 349, Ch. 286, L. 1959; R.C.M. 1947, 40-3922.

33-20-1003. Violations. Violations of parts 10 through 12 of this chapter are subject to the penalties provided by 33-1-104.

History: En. Sec. 350, Ch. 286, L. 1959; R.C.M. 1947, 40-3923.

Part 11

Groups and Group Requirements

Part Cross-References

Group disability insurance — same group eligible, 33-22-501.

Physicians' liens — exemptions, 71-3-1118.

33-20-1101. Employee groups. The lives of a group of individuals may be insured under a policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of such affiliated corporations, proprietors, or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 10 employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

History: En. Sec. 329, Ch. 286, L. 1959; R.C.M. 1947, 40-3902.

33-20-1102. Labor union groups. The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment or to membership in the union, or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of

the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 25 members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

History: En. Sec. 330, Ch. 286, L. 1959; R.C.M. 1947, 40-3903.

33-20-1103. Employer and labor union combinations — trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by one or more labor unions or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions or all of any class or classes thereof determined by conditions pertaining to their employment or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(2) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured persons specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least 75% of the then eligible persons, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at date of issue at least 100 persons and not less than an average of 5 persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued if:

(a) either:

(i) the participating employers constitute at date of issue at least 60% of those employer members whose employees are not already covered for group life insurance; or

(ii) the total number of persons covered at date of issue exceeds 600; and

(b) the policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

History: En. Sec. 331, Ch. 286, L. 1959; R.C.M. 1947, 40-3904.

33-20-1104. Public employee groups. The lives of a group of individuals may be insured under a policy issued to an incorporated city, town, or village or an association or league of cities, towns, or villages, an independent school district, state college or university, any association of state employees, and any association of state, county, and city, town, or village employees and any combination of state, county, or city, town, or village employees and any department of the state or county government, which employer or association shall be deemed the policyholder, to insure the employees of any such incorporated city, town, or village, of any such independent school district, of any such state college and university, or of any such department of the state or county government or members of any association of state, county, or city, town, or village employees, for the benefit of persons other than the policyholder, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include retired employees. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) The premium for the policy shall be paid by the policyholder wholly from funds contributed by it as employer or partly from such funds and partly from funds contributed by the insured employees or wholly from funds contributed by the insured employees, except that:

(a) the employer may deduct from the employees' salaries the required contributions for the premiums when authorized in writing by the respective employees so to do; and

(b) the premium for the policy may be paid by the policyholder wholly or partly from funds contributed by any incorporated city, town, or village policyholder when authorized by the charter of such city, town, or village or as otherwise authorized by law.

(3) Such policy may be placed in force only if at least 75% of the eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder.

(4) The policy must cover at least 10 employees at date of issue.

History: En. Sec. 332, Ch. 286, L. 1959; R.C.M. 1947, 40-3905.

Cross-References

Public employee group insurance, Title 2, ch. 18, parts 7 and 8.

33-20-1105. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or all of any class or classes thereof determined by conditions pertaining to the indebtedness or the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations and the debtors of one or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of such affiliated corporations, proprietors, or partnerships is under common control.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly or may reasonably be expected to receive at least 100 new entrants during the first policy year and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor.

(5) The insurance shall be payable to the policyholder. Each payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

History: En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965; R.C.M. 1947, 40-3906; amd. Sec. 1, Ch. 617, L. 1985.

33-20-1106. Credit union groups. The lives of a group of individuals may be insured under a policy issued to a credit union organized pursuant to the laws of the state of Montana or the Federal Credit Union Act, which shall be deemed the policyholder, to insure eligible members for amounts of insurance not in excess of the share balance of each member, based upon some plan which will preclude individual selection, for the benefit of someone other than the credit union or its officials and subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all the members of the credit union who meet standard physical requirement conditions of the insurer or all of any class or classes thereof determined by conditions pertaining to their age or to membership in the credit union or both.

(2) The premiums for the policy shall be paid by the policyholder, either wholly from the credit union's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insured, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 25 members at the date of issue.

History: En. Sec. 334, Ch. 286, L. 1959; R.C.M. 1947, 40-3907.

Cross-References

Credit unions — insurance authorized, 32-3-609.

33-20-1107 through 33-20-1110 reserved.

33-20-1111. Dependents of employee and labor union groups — coverage. Any group life policy issued under 33-20-1101, 33-20-1102, or 33-20-1103 may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

(1) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least 75% of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer, or union.

(3) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse is entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination, subject to the requirements of subsections (1)(a), (1)(b), and (1)(c) of 33-20-1209. If the group policy terminates or is amended so as to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under 33-20-1210, the spouse is also entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(4) Notwithstanding 33-20-1208, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

History: En. Sec. 336, Ch. 286, L. 1959; amd. Sec. 1, Ch. 215, L. 1977; R.C.M. 1947, 40-3909; amd. Sec. 25, Ch. 198, L. 1979; amd. Sec. 84, Ch. 370, L. 1987.

Part 12

Group Contract Provisions

Part Cross-References

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

33-20-1201. Provisions required in group contracts. A policy of group life insurance may not be delivered in this state unless it contains in substance the provisions set forth in this part or provisions that in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder, however:

(1) 33-20-1207 through 33-20-1211 do not apply to policies issued to a creditor to insure debtors of the creditor;

(2) the standard provisions required for individual life insurance policies do not apply to group life insurance policies; and

(3) if the group life insurance policy is on a plan of insurance other than the term plan, it must contain a nonforfeiture provision or provisions that in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing in this subsection may be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies.

History: En. Sec. 337, Ch. 286, L. 1959; R.C.M. 1947, 40-3910; amd. Sec. 39, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in introductory clause after "set forth in" substituted "this part" for "33-20-1202 through 33-20-1211"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Nonforfeiture provisions — standard life policies, Title 33, ch. 20, part 2.

33-20-1202. Grace period. The group life insurance policy shall contain a provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

History: En. Sec. 338, Ch. 286, L. 1959; R.C.M. 1947, 40-3911.

Cross-References

Computation of time — which days counted, 1-1-306.

33-20-1203. Incontestability. The group life insurance policy shall contain a provision that the validity of the policy shall not be contested, except for nonpayment of premium, after it has been in force for 2 years from its date of issue and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of 2 years during such person's lifetime or unless it is contained in a written instrument signed by him.

History: En. Sec. 339, Ch. 286, L. 1959; R.C.M. 1947, 40-3912.

33-20-1204. Application — statements deemed representations. The group life insurance policy shall contain a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

History: En. Sec. 340, Ch. 286, L. 1959; R.C.M. 1947, 40-3913.

Cross-References

Representations and warranties — standard provision regarding applications, 33-15-403.

33-20-1205 . Insurability. The group life insurance policy shall contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

History: En. Sec. 341, Ch. 286, L. 1959; R.C.M. 1947, 40-3914.

33-20-1206. Misstatement of age. The group life insurance policy shall contain a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

History: En. Sec. 342, Ch. 286, L. 1959; R.C.M. 1947, 40-3915.

33-20-1207. Payment of benefits. (1) The group life insurance policy shall contain a provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding $500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(2) The provisions of 33-20-114(2) shall be incorporated into the group life insurance policy and are applicable as set out in that subsection.

History: En. Sec. 343, Ch. 286, L. 1959; R.C.M. 1947, 40-3916; amd. Sec. 3, Ch. 469, L. 1985.

33-20-1208. Certificate. The group life insurance policy shall contain a provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in 33-20-1209 through 33-20-1211.

History: En. Sec. 344, Ch. 286, L. 1959; R.C.M. 1947, 40-3917.

33-20-1209. Conversion on termination of eligibility. (1) The group life insurance policy shall contain a provision that if the insurance or any portion of it on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance, provided application for the individual policy shall be made and the first premium paid to the insurer within 31 days after such termination, and provided further that:

(a) the individual policy shall, at the option of such person, be on any one of the forms, including but not limited to term insurance, if the group policy so provides, then customarily issued by the insurer at the age and for the amount applied for and shall offer benefits at least equal to those under the group coverage;

(b) the individual policy shall, at the option of the insured, be in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which such person is insured under any other group policy within 31 days after such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(c) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

(2) With the consent of the employer, a person covered under a group life insurance policy issued to an employer or to the trustees of a fund established by an employer under 33-20-1101 may continue his coverage under the group policy during his employment notwithstanding reduction of his regular work schedule to less than the minimum number of hours required for eligibility for membership. The premium charged for the continued coverage shall be equal to that charged other members of the group. Such person's coverage under the group will cease if he subsequently becomes eligible for coverage under another group policy because of employment elsewhere.

History: En. Sec. 345, Ch. 286, L. 1959; R.C.M. 1947, 40-3918; amd. Sec. 1, Ch. 579, L. 1981.

Cross-References

Assignment — general provisions, 33-15-414.

33-20-1210. Conversion on termination of policy. The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least 3 years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by 33-20-1209, except that the group policy may provide that the amount of such individual policy may not exceed the smaller of:

(1) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination; or

(2) $10,000.

History: En. Sec. 346, Ch. 286, L. 1959; R.C.M. 1947, 40-3919; amd. Sec. 2, Ch. 579, L. 1981; amd. Sec. 9, Ch. 518, L. 1983.

Cross-References

Assignment — general provisions, 33-15-414.

33-20-1211. Death pending conversion. The group life insurance policy shall contain a provision that if a person insured under the policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with 33-20-1209 or 33-20-1210 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

History: En. Sec. 347, Ch. 286, L. 1959; R.C.M. 1947, 40-3920.

33-20-1212. Notice as to conversion right. If any individual insured under a group life insurance policy hereafter delivered in this state becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy and if such individual is not given notice of the existence of such right at least 15 days prior to the expiration date of such period, then in such event the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire 15 days next after the individual is given such notice, but in no event shall such additional period extend beyond 60 days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this section.

History: En. Sec. 348, Ch. 286, L. 1959; R.C.M. 1947, 40-3921.

33-20-1213. Policy provisions — conformity with state statutes. Each policy regulated by this part must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: En. Sec. 22, Ch. 798, L. 1991.

Part 13

Viatical Settlements

33-20-1301. Short title. This part may be cited as the "Viatical Settlement Act".

History: En. Sec. 1, Ch. 298, L. 1997.

33-20-1302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other consideration:

(i) offers or advertises the availability of viatical settlement contracts;

(ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with a terminal illness or condition to viatical settlement providers; or

(iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or certificate holders and one or more viatical settlement providers.

(b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant, or consultant is paid by the viatical settlement provider.

(2) "Viatical settlement contract" means a written agreement between a viatical settlement provider and the holder of a group or individual life insurance policy insuring the life of an individual with a terminal illness or condition or between a viatical settlement provider and the certificate holder of a policy in which:

(a) the terms establish that the viatical settlement provider pays something of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider; and

(b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate to name the beneficiary.

(3) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical settlement contracts or offers to enter into or negotiate viatical settlement contracts.

(b) A viatical settlement provider may use the term "life settlement provider" to describe the business transacted under the license and may use the term "life settlement contract" instead of "viatical settlement contract".

(c) Viatical settlement provider does not mean:

(i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy only as collateral for a loan;

(ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127 or pursuant to the laws of the state to which the policy was subject when issued;

(iii) an individual who enters into a single agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; or

(iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee or retiree of the corporation or of a partner. The settlement made on any contract exempt under this section must be reasonable and subject to the standards imposed on licensees under 33-20-1304.

History: En. Sec. 2, Ch. 298, L. 1997.

33-20-1303. License application. (1) A person may not act as or purport to be a viatical settlement provider or viatical settlement broker unless licensed as a viatical settlement provider or viatical settlement broker under this part.

(2) In order to obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, an applicant shall apply for the license on forms prescribed by the commissioner and shall pay the fee required for the application.

(3) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

(4) If an applicant is a corporation, the corporation must be:

(a) incorporated or organized under the laws of this state; or

(b) a foreign corporation authorized to transact business in this state.

(5) If the applicant is a partnership, the partnership must be organized under the laws of this state.

History: En. Sec. 3, Ch. 298, L. 1997.

33-20-1304. Issuance of license. (1) The commissioner may issue a license to the applicant if the commissioner determines that the applicant:

(a) has satisfied all of the requirements for the license for which an application is made;

(b) has not engaged in conduct that would authorize the commissioner to refuse to issue a license under this part; and

(c) is financially responsible and has a good business reputation.

(2) The commissioner may issue a license to a nonresident applicant only if the nonresident applicant files with the commissioner in writing an appointment of the commissioner to be the agent of the applicant upon whom all legal process in any action or proceeding against the applicant may be served. In the appointment, the applicant shall agree that any lawful process against the applicant that is served upon the commissioner is of the same legal force and validity as if served upon the applicant and that the authority will continue in force as long as any liability remains outstanding in this state. An appointment under this subsection becomes effective on the date that the commissioner issues the license to the applicant.

(3) If the commissioner denies an application, the commissioner shall inform the applicant and state the grounds for the denial.

(4) An individual may act as a viatical settlement provider or viatical settlement broker under the authority of the license of a firm or of a corporate viatical settlement provider whether or not the individual holds a license as a viatical settlement provider if:

(a) the individual is a member or employee of the firm or is an employee, officer, or director of the corporation; and

(b) the individual is designated by the firm or corporation on its license application or on a form that amends or supplements the application as being authorized to act as a viatical settlement provider under the authority of the license.

History: En. Sec. 4, Ch. 298, L. 1997.

33-20-1305. Expiration of license. (1) A license issued under this part expires on its expiration date unless it is renewed on or before its expiration date.

(2) Unless the commissioner designates another date, a license expires on the last day of the month in which the second anniversary of the initial issuance date of the license occurs and on the last day of the month of the second anniversary following each renewal.

History: En. Sec. 5, Ch. 298, L. 1997.

33-20-1306. Notification by licensee of material change affecting qualification for license. A licensee shall immediately notify the commissioner of any material change in ownership or control or in any other matter affecting the qualification of the licensee for the license in this state, including keeping the commissioner informed about personnel and address changes.

History: En. Sec. 6, Ch. 298, L. 1997.

33-20-1307. Suspension — revocation — refusal to issue or renew license. (1) The commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee or is guilty of one or more of the following:

(a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;

(b) a pattern of unreasonable payments to policyholders or certificate holders;

(c) falsification of an application for the license or renewal of the license or misrepresentation or engagement in any other dishonest act in relation to the application;

(d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;

(e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;

(g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms of probation set by the commissioner;

(h) refusal by a licensee to be examined or to produce accounts, records, or files for examination, refusal by any officers or employees to give information with respect to the affairs of the licensee, or refusal to perform any other legal obligation as to the examination, when required by the commissioner;

(i) affiliation with or under the same general management or interlocking directorate or ownership as another viatical settlement provider, viatical settlement broker, or insurer, any of which unlawfully transacts business in this state;

(j) failure at any time to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the commissioner; or

(k) violation of any rule or order of the commissioner or any provision of Montana law.

(2) The commissioner may suspend or refuse to renew a license immediately and without hearing if the commissioner determines that one or both of the following circumstances exist:

(a) the licensee is insolvent;

(b) the financial condition or business practices of the licensee otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(3) The commissioner may refuse to issue a license in the name of any firm, partnership, or corporation if the commissioner believes that any officer, employee, stockholder, or partner who may materially influence the conduct of the applicant does not meet the standards of this section.

(4) A viatical settlement provider or viatical settlement broker holding a license that has not been renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's request.

(5) The commissioner may take any other administrative action authorized under Montana law in addition to or in lieu of the actions authorized under this part.

History: En. Sec. 7, Ch. 298, L. 1997.

33-20-1308. Terms of contract. (1) A viatical settlement contract must be in writing. A viatical settlement provider shall establish in the contract the terms under which the viatical settlement provider will pay compensation or anything of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

(2) A viatical settlement provider may not use a viatical settlement contract in this state unless the viatical settlement provider has filed the contract form with the commissioner and the commissioner has approved the contract form according to the provisions set forth in 33-1-501. The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyholder or certificate holder.

(3) Each viatical settlement contract entered into in this state must contain a provision enabling the policyholder or certificate holder to rescind the contract not later than the 30th day after the date on which the contract is executed by all parties or not later than the 15th day after the policyholder or certificate holder receives the viatical settlement proceeds, whichever is the longer period. In order to rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to the viatical settlement provider.

History: En. Sec. 8, Ch. 298, L. 1997.

33-20-1309. Annual report by provider. Unless the commissioner grants a time extension, a viatical settlement provider shall file a report for the preceding calendar year with the commissioner on or before March 1 of each year. The report must be in the form and must contain the information that the commissioner prescribes. The report must be verified as follows:

(1) if the viatical settlement provider is a corporation, by at least two principal officers of the viatical settlement provider;

(2) if the viatical settlement provider is a partnership, by two partners; or

(3) if the viatical settlement provider is not a corporation or a partnership, by the provider's owner and manager.

History: En. Sec. 9, Ch. 298, L. 1997.

33-20-1310. Examination of business and practices of licensee or applicant — maintenance of business records. (1) The commissioner may examine the business and practices of any licensee or applicant for a license when the commissioner determines an examination to be necessary. The commissioner may order a licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred in conducting an examination.

(2) A viatical settlement provider shall maintain records of all transactions of viatical settlement contracts of the viatical settlement provider and shall make the records available to the commissioner for inspection during reasonable business hours. The records must be maintained for a period of not less than 5 years from the date of their creation.

(3) The commissioner may at any time require a licensee to fully disclose the identity of all stockholders, partners, officers, and employees.

(4) The names of and individual identification data for all policyholders and certificate holders who have entered viatical settlement contracts with viatical settlement providers are confidential and may not be disclosed except in cases in which the commissioner determines that the merits of public disclosure exceed the demands of individual privacy.

History: En. Sec. 10, Ch. 298, L. 1997; amd. Sec. 10, Ch. 416, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 416 at end of (4) substituted "in cases in which the commissioner determines that the merits of public disclosure exceed the demands of individual privacy" for "as considered necessary by the commissioner in administration of this part"; and made minor changes in style. Amendment effective October 1, 1999.

33-20-1311. Disclosure of information to policyholder. A viatical settlement provider shall disclose the information specified in this section to the policyholder or certificate holder entering the viatical settlement contract prior to the date on which the viatical settlement contract is signed by all parties. The disclosure must be in the form prescribed by the commissioner. The information must include the following:

(1) possible alternatives to viatical settlement contracts for persons with terminal illnesses or conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance policy;

(2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax adviser. Viatical settlement brokers, viatical settlement providers, or their respective employees or agents may not act as personal tax advisers for purposes of this disclosure requirement.

(3) the fact that the viatical settlement could be subject to the claims of creditors;

(4) the fact that receipt of a viatical settlement may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlement and that advice should be obtained from the appropriate agencies;

(5) the right of a policyholder or certificate holder to rescind a viatical settlement contract as provided in 33-20-1308. The disclosure must state the deadlines for rescission and the return of proceeds received.

(6) the date by which the funds will be available to the policyholder or certificate holder and the source of the funds; and

(7) the fact that the viatical settlement contract is void if the viatical settlement provider or viatical settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract.

History: **En. Sec. 11, Ch. 298, L. 1997.**

33-20-1312. Conditions precedent to entering into viatical settlement contract. (1) Before a viatical settlement provider enters into a viatical settlement contract with a policyholder or certificate holder who has a terminal illness or condition, the viatical settlement provider shall first obtain the following:

(a) a written statement from an attending physician that the policyholder or certificate holder is of sound mind and not under constraint or undue influence; and

(b) a witnessed document in which the policyholder or certificate holder:

(i) consents to the viatical settlement contract;

(ii) acknowledges that the illness or condition is terminal;

(iii) represents that the policyholder or certificate holder has a full and complete understanding of the viatical settlement contract;

(iv) confirms that the policyholder or certificate holder has a full and complete understanding of the benefits of the life insurance policy;

(v) releases the medical records of the policyholder or certificate holder relating to the terminal illness or condition; and

(vi) acknowledges that the policyholder or certificate holder has entered into the viatical settlement contract freely and voluntarily.

(2) A viatical settlement provider may enter a viatical settlement contract only after the individual whose life would be the subject of the viatical settlement contract is determined to have a terminal illness or condition, as follows:

(a) if the individual is the policyholder or certificate holder, an attending physician of the policyholder or certificate holder shall make the determination; or

(b) if the individual is a person other than the policyholder or certificate holder, an attending physician of the individual or of the policyholder or certificate holder shall make the determination.

(3) For purposes of this section, “attending physician” means a medical doctor, a doctor of osteopathy, or a naturopathic physician licensed in this state, who is primarily responsible for the treatment or a portion of treatment of the individual whose life would be the subject of the viatical settlement contract.

History: **En. Sec. 12, Ch. 298, L. 1997.**

33-20-1313. Prohibitions on finder’s fee — solicitations — discrimination — false or misleading advertising or solicitation — misuse of confidential information. (1) A licensee may not pay or offer to pay a finder’s fee, commission, or other compensation to a person described in this subsection (1) in connection with a policy insuring the life of an individual with a terminal illness or condition. The prohibition under this subsection (1) applies with respect to payments or offers of payment to:

(a) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured individual;

(b) any person other than a physician, attorney, or accountant described in subsection (1)(a) who provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the insured individual when the individual is other than the policyholder or certificate holder; or

(c) any person other than one described in subsection (1)(a) or (1)(b) who acts as an agent of the policyholder, certificate holder, or insured individual.

(2) A licensee may not solicit an investor who could influence the treatment of the illness or condition of the individual whose life would be the subject of a viatical settlement contract.

(3) All information solicited or obtained from a policyholder or certificate holder by a licensee is subject to the confidentiality requirements set forth in Title 33, chapter 19. For purposes of this subsection, a licensee must be considered an insurance-support organization as defined in 33-19-104.

(4) A licensee may not discriminate in the making of a viatical settlement contract on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and may not discriminate between persons who have dependents and persons who do not have dependents.

(5) A person licensed pursuant to 33-20-1304 may not engage in any false or misleading advertising, solicitation, or practice as described in 33-18-203.

(6) A person licensed pursuant to 33-20-1304 may not sell another product of insurance to the contract holder unless approval is obtained from the commissioner.

History: En. Sec. 13, Ch. 298, L. 1997.

33-20-1314. Payment to escrow or trust account — lump-sum payment. (1) Immediately upon receipt of documents from the policyholder or certificate holder effecting the transfer of the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately upon receipt of acknowledgment of the transfer from the insurer.

(2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement contract in a lump sum except as provided in this subsection. A viatical settlement provider may not retain any portion of the proceeds. A viatical settlement provider may make installment payments only if the viatical settlement provider has purchased an annuity issued by an authorized insurer or a similar financial instrument issued by a financial institution authorized to engage in the business of a financial institution in this state.

(3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed to the policyholder or certificate holder renders the contract void.

History: En. Sec. 14, Ch. 298, L. 1997.

33-20-1315. Rules — standards — bond. The commissioner may, in accordance with the provisions of 33-1-313, adopt rules for the purpose of carrying out this part. In addition, the commissioner:

(1) may establish standards for evaluating reasonableness of payments under viatical settlement contracts. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner shall consider payments made in regional and national viatical settlement markets to the extent that this information is available, as well as model standards developed by the national association of insurance commissioners.

(2) shall require a bond and an errors and omissions insurance policy of both kinds of licensees; and

(3) shall adopt rules to establish:

(a) trade practice standards for the purpose of regulating advertising and solicitation of viatical settlement contracts; and

(b) fees that are commensurate with fees charged pursuant to 33-2-708.

History: En. Sec. 15, Ch. 298, L. 1997.

CHAPTER 21

CREDIT LIFE AND DISABILITY INSURANCE

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Part 1

General Provisions

33-21-101. Short title. This chapter may be cited as "The Model Act for the Regulation of Credit Life Insurance and Credit Disability Insurance".

History: En. Sec. 393, Ch. 286, L. 1959; R.C.M. 1947, 40-4202.

33-21-102. Purpose and scope. (1) The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit disability insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed.

(2) Except as provided in subsection (3), this chapter applies to each policy, certificate of insurance, notice of proposed insurance, binder, endorsement, and rider of life insurance and disability insurance delivered or issued for delivery in Montana in connection with loans or other credit transactions for personal, family, or household purposes.

(3) This chapter does not apply to life insurance or disability insurance delivered or issued for delivery in connection with:

(a) a loan or other credit transaction of more than 15 years' duration;

(b) a credit transaction that is:

(i) secured by a first mortgage or deed of trust; and

(ii) made to finance the purchase of real property or the construction of a dwelling thereon or to refinance a prior credit transaction made for that purpose; or

(c) a credit transaction that is an isolated transaction on the part of the insurer and that is not related to an agreement or a plan for insuring debtors of the creditor.

History: (1)En. Sec. 392, Ch. 286, L. 1959; Sec. 40-4201, R.C.M. 1947; (2)En. Sec. 394, Ch. 286, L. 1959; amd. Sec. 1, Ch. 31, L. 1969; amd. Sec. 1, Ch. 323, L. 1974; Sec. 40-4203, R.C.M. 1947; R.C.M. 1947, 40-4201, 40-4203; amd. Sec. 2, Ch. 617, L. 1985; amd. Sec. 2, Ch. 156, L. 1989.

Cross-References

Real and personal property — choice by borrower, 33-18-501.

33-21-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Credit disability insurance" means insurance on a debtor or joint debtors to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor or either of the joint debtors is disabled as defined in the policy.

(2) "Credit life insurance" means insurance on the life of a debtor or the lives of joint debtors pursuant to or in connection with a specific loan or other credit transaction.

(3) "Credit transaction" means a transaction by the terms of which, at a future date:

(a) repayment of money loaned is made;

(b) a loan commitment is made; or

(c) payment for goods, services, or property sold or leased is made.

(4) "Creditor" means:

(a) a lender of money or vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction;

(b) any successor to the right, title, or interest of a lender, vendor, or lessor;

(c) an affiliate, associate, or subsidiary of a lender, vendor, or lessor;

(d) a director, officer, or employee of a lender, vendor, or lessor; or

(e) any other person in any way associated with a lender, vendor, or lessor.

(5) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.

(6) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

(7) "Open-end credit" means credit extended by a creditor under an agreement in which:

(a) the creditor reasonably contemplates repeated transactions;

(b) the creditor imposes a finance charge from time to time on an outstanding unpaid balance; and

(c) the amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

History: En. Sec. 395, Ch. 286, L. 1959; R.C.M. 1947, 40-4204; amd. Sec. 3, Ch. 156, L. 1989; amd. Sec. 1, Ch. 179, L. 1993.

33-21-104. Existing insurance — choice of insurer. When credit life insurance or credit disability insurance is required as additional security for an indebtedness, the debtor, upon request to the creditor, has the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through an insurer authorized to transact insurance within Montana.

History: En. Sec. 405, Ch. 286, L. 1959; R.C.M. 1947, 40-4214; amd. Sec. 4, Ch. 156, L. 1989.

Cross-References

Retail installment sales — choice of insurer provided, 31-1-233.

33-21-105. Claims. (1) A claim must be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. A claim must be settled as soon as possible and in accordance with the terms of the insurance contract.

(2) A claim must be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions or upon direction of the claimant to one specified.

(3) No plan or arrangement may be used whereby a person, partnership, or corporation other than the insurer or its designated claim representative is authorized to settle or adjust claims. The creditor may not be designated as claim representative for the insurer in adjusting claims, except that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

History: En. Sec. 404, Ch. 286, L. 1959; R.C.M. 1947, 40-4213; amd. Sec. 5, Ch. 156, L. 1989.

Cross-References

Unfair trade practice — delay caused by requiring multiple proofs of loss, 33-18-201.

Administrative penalty for failure to promptly pay claims, 33-18-231, 33-18-232, 33-18-235.

33-21-106 through 33-21-110 reserved.

33-21-111. Rules — enforcement of chapter. The commissioner may, after notice and hearing, issue such rules as he deems appropriate for the supervision of this chapter. Whenever the commissioner finds that there has been a violation of this chapter or any rules issued pursuant thereto and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and other person authorized or licensed by the commissioner on the date specified unless sooner withdrawn by the commissioner or a stay thereof has been ordered by a court of competent jurisdiction.

History: En. Sec. 406, Ch. 286, L. 1959; R.C.M. 1947, 40-4215.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

General penalty — Montana Insurance Code, 33-1-104.

Promulgation of rules by Commissioner, 33-1-313.

Hearings by Commissioner, 33-1-701.

Judicial review of Commissioner's decisions — stay of order, 33-1-711.

33-21-112. Judicial review. Any party to the proceeding affected by an order of the commissioner shall be entitled to judicial review by following the procedure set forth in 33-1-711.

History: En. Sec. 407, Ch. 286, L. 1959; R.C.M. 1947, 40-4216.

33-21-113. Penalties. In addition to any penalty provided by law, a person who violates an order of the commissioner after it has become final and while the order is in effect shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of Montana a sum not to exceed $250 which may be recovered in a civil action, except that if the violation is found to be willful, the amount of the penalty is a sum not to exceed $1,000. The commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, partnership, or corporation guilty of such violation. The order for suspension or revocation is subject to judicial review as provided in 33-1-711.

History: En. Sec. 408, Ch. 286, L. 1959; R.C.M. 1947, 40-4217; amd. Sec. 6, Ch. 156, L. 1989.

Cross-References

Legal actions by state agencies — Attorney General to be notified, 25-1-501.

General penalty — Montana Insurance Code, 33-1-104.

Hearings by Commissioner, 33-1-701.

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

Part 2
Policy Requirements

Part Cross-References

Retail installment sales — general provisions regarding insurance, 31-1-233.

Consumer loans — applicability and limits, 32-5-306.

33-21-201. Form of issuance. An insurer may deliver or issue for delivery credit life insurance and credit disability insurance only in the following forms:

(1) individual policies of life insurance issued to debtors on a term plan;

(2) individual policies of disability insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;

(3) group policies of life insurance issued to creditors providing insurance on the lives of debtors on a term plan;

(4) group policies of disability insurance issued to creditors on a term plan insuring debtors or disability provisions in group credit life insurance policies to provide disability coverage;

(5) joint policies of life insurance issued to debtors providing insurance jointly on the lives of joint debtors on a term plan; or

(6) joint policies of disability insurance issued to debtors on a term plan insuring joint debtors or disability provisions in joint credit life insurance policies to provide disability coverage.

History: En. Sec. 396, Ch. 286, L. 1959; R.C.M. 1947, 40-4205; amd. Sec. 7, Ch. 156, L. 1989; amd. Sec. 2, Ch. 179, L. 1993.

33-21-202. Amount. (1) The initial amount of credit life insurance may not exceed the total amount repayable under the contract of indebtedness. If an indebtedness is repayable in substantially equal installments, the amount of credit life insurance may not exceed the scheduled or actual amount of unpaid indebtedness on the date of death, whichever is greater. The amount of credit life insurance written in connection with:

(a) a credit transaction repayable over a term in excess of 63 months or, at the option of the insurer, for a shorter term may not exceed the actual amount of unpaid indebtedness on the date of death, excluding any:

(i) unearned interest or finance charges; and

(ii) delinquency or extension exceeding 4 months;

(b) an open-end credit agreement having a credit limit exceeding $10,000 may not exceed the plan's credit limit;

(c) an agricultural loan commitment not exceeding 1 year may not exceed the amount of the loan commitment on a nondecreasing or level term plan; and

(d) an education loan commitment may be for the amount of the portion of the commitment that has not been advanced by the creditor.

(2) The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, may not exceed:

(a) the aggregate of the periodic scheduled unpaid installments of indebtedness; and

(b) the original indebtedness divided by the number of periodic installments.

(3) A group or individual credit disability insurance policy or a certificate that provides coverage for credit card indebtedness must provide a disability benefit during each credit card billing cycle throughout the term of coverage that, subject to any specified dollar amount limit defined in the policy or certificate, may not be less than the sum of the following amounts payable in the billing cycle and based on the insured balance on the date that an insured disability commences:

(a) the greater of:

(i) the minimum payment required by the creditor for the billing cycle, less any past-due payments and accelerated payments required for the overlimit usage of the credit card; or

(ii) the finance charge calculated pursuant to the credit card contract;

(b) all premiums charged for credit disability insurance coverage; and

(c) all other charges related to the insured balance as of the date the insured disability commences that are incurred in the billing cycle as a result of the insurer's delay in processing a claim payment.

History: En. Sec. 397, Ch. 286, L. 1959; amd. Sec. 2, Ch. 323, L. 1974; R.C.M. 1947, 40-4206; amd. Sec. 8, Ch. 156, L. 1989; amd. Sec. 1, Ch. 530, L. 1997.

Cross-References

Unfair trade practice — failure to promptly pay, 33-18-201.

33-21-203. Term. (1) The term of any credit life insurance or credit disability insurance commences, subject to acceptance by the insurer, on the date on which the debtor becomes obligated to the creditor. However, if a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to the indebtedness commences on the effective date of the policy.

(2) When evidence of insurability is required and the evidence is furnished more than 30 days after the date on which the debtor becomes obligated to the creditor, the term of the insurance may commence on the date the insurer determines the evidence is satisfactory. In that event, the insurer shall make an appropriate refund or adjustment of any charge to the debtor for insurance.

(3) The term of the insurance may not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor, but the term of the insurance may be less than the term of the credit transaction to provide modified or partial coverage or extend beyond the maturity date to provide coverage consistent with 33-21-202(1)(a).

(4) If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force must be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund must be paid or credited as provided in 33-21-206.

History: En. Sec. 398, Ch. 286, L. 1959; R.C.M. 1947, 40-4207; amd. Sec. 9, Ch. 156, L. 1989.

33-21-204. Policy or certificate delivered — time of delivery — provisions. (1) All credit life insurance and credit disability insurance sold must be evidenced by an individual policy or, in the case of group insurance, by a certificate of insurance, which individual policy or group certificate of insurance must be delivered to the debtor at the time the indebtedness is incurred except as hereinafter provided.

(2) If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth

the name and home office address of the insurer, the name of each debtor, the premium or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance coverage, the amount, term, and a brief description of the coverage provided or to be provided, must be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for or notice of proposed insurance must also refer exclusively to insurance coverage and must be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this section is prominently set forth therein. Upon approval by the insurer of the application for insurance or acceptance of the insurance by the insurer and within 30 days of the date upon which the indebtedness is incurred, the insurer shall deliver the individual policy or group certificate of insurance to the debtor. The application or notice of proposed insurance must state that, upon acceptance by the insurer, the insurance becomes effective as of the date the indebtedness is incurred. If the named insurer does not accept the risk, the debtor must receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged. If the amount of premium is less than that set forth in the notice of proposed insurance, the insurer shall make an appropriate refund.

(3) Each individual policy or group certificate of credit life insurance and credit disability insurance must, in addition to other requirements of law, set forth the name and home office address of the insurer, the name of each debtor or, in the case of a group certificate of insurance, the identity by name or otherwise of the debtor, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance, a description of the coverages, including the amount and term thereof and any exceptions, limitations, or restrictions, and must state that the benefits must be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess must be payable to a beneficiary, other than the creditor, named by the debtor or to his estate. If the term of the insurance is less than the term of the loan, that fact must be stated on the face of the individual policy or group certificate in not less than 10-point boldface type.

(4) For the purposes of subsections (1) and (2), an individual policy or group certificate of insurance delivered in connection with an open-end credit agreement is considered to be delivered at the time the indebtedness is incurred if delivery occurs on or before the date the indebtedness is incurred.

History: En. Secs. 399, 400, Ch. 286, L. 1959; R.C.M. 1947, 40-4208, 40-4209; amd. Sec. 10, Ch. 156, L. 1989.

33-21-205. Filing, approval, and withdrawal of forms and rates — disapproval. (1) With respect to credit life insurance or credit disability insurance:

(a) a policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider may not be delivered or issued for delivery in Montana unless it has been filed with and approved by the commissioner, in accordance with 33-1-501, and the regulatory official of the state in which it is issued; and

(b) a schedule of premium rates pertaining to a policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider may not be used in Montana unless it has been filed with the commissioner.

(2) With respect to credit life insurance or credit disability insurance and in accordance with 33-1-501, the commissioner may disapprove a policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider:

(a) for a reason listed in 33-1-502;

(b) if the table of premium rates charged or to be charged appears by reasonable assumptions to be excessive in relation to benefits; or

(c) if it contains provisions that are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of the insurance.

(3) If the commissioner notifies the insurer that a form is disapproved, it is unlawful for the insurer to issue or use the form.

(4) An insurer may not issue or use a form after the commissioner withdraws approval of the form pursuant to 33-1-501. An order or final determination of the commissioner under this section is subject to judicial review.

History: En. Sec. 401, Ch. 286, L. 1959; R.C.M. 1947, 40-4210; amd. Sec. 11, Ch. 156, L. 1989.

Cross-References

Commissioner to approve forms, Title 33, ch. 1, part 5.

Hearings by Commissioner, 33-1-701.

Judicial review of Commissioner's decisions, 33-1-711.

33-21-206. Premiums and refunds. (1) Each insurer issuing credit life insurance or credit disability insurance shall file with the commissioner its schedules of premium rates for use in connection with such insurance. Any insurer may revise the schedules from time to time and shall file the revised schedules with the commissioner. No insurer may issue any credit life insurance policy or credit disability insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner. The commissioner may require the filing of the schedule of premium rates for use in connection with and as a part of the specific policy filings as provided by 33-21-205.

(2) Each individual policy, group certificate of insurance, or notice of proposed insurance of credit life insurance and credit disability insurance must provide that, if the insurance is terminated before the scheduled maturity date of the indebtedness, any refund of premium or amount paid by the debtor for insurance must be paid or credited promptly to the person entitled thereto; provided, however, that the commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing refunds must be filed with and approved by the commissioner.

(3) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit disability insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account.

(4) The amount charged to a debtor for any credit life insurance or credit disability insurance may not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

(5) Nothing in this chapter may be construed to authorize any payments for insurance prohibited under a statute, or rule thereunder, governing credit transactions.

History: En. Sec. 402, Ch. 286, L. 1959; amd. Sec. 1, Ch. 113, L. 1967; R.C.M. 1947, 40-4211; amd. Sec. 12, Ch. 156, L. 1989.

33-21-207. Issuance of policies. Each policy, certificate of insurance, or notice of proposed insurance of credit life insurance and credit disability insurance must be delivered or issued for delivery in Montana only by an insurer authorized to transact insurance in Montana and must, except as provided in 33-17-103, be issued only through a licensed insurance producer.

History: En. Sec. 403, Ch. 286, L. 1959; R.C.M. 1947, 40-4212; amd. Sec. 13, Ch. 156, L. 1989; amd. Sec. 37, Ch. 16, L. 1991.

Cross-References

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CHAPTER 22

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33-22-1817. Collection of charges and premiums.
33-22-1818. Small employer carrier reinsurance program — board membership.
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33-22-1902. Definitions.
33-22-1903. Obstetricians or gynecologists as primary care physicians.
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33-22-1906. Payment of covered services provided by certified advanced practice registered nurses.
33-22-1907. Disclosure.
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Chapter Cross-References

Denial of insurance — credit report — consumer's rights, 31-3-131.

Comprehensive health association and plan, Title 33, ch. 22, part 15.

Child support orders — statement concerning required health insurance coverage, 40-4-204.

Child support — health insurance coverage required — enforcement, 40-5-208.

Paternity orders — statement concerning required health insurance coverage, 40-6-116.

Discrimination prohibited — nongender insurance law, 49-2-309.

Living will declaration — not required as condition for insurance coverage, 50-9-205.

Living wills — effect on insurance, 50-9-205.

Crime victims compensation claimants — release of insurance payment information concerning, 53-9-104.

Physicians' liens — exemptions, 71-3-1118.

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Part Cross-References

Collateral source reductions in actions arising from bodily injury or death — subrogation rights, 27-1-308.

33-22-101. Exceptions to scope. Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-130 through 33-22-136, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance.

History: En. Sec. 351, Ch. 286, L. 1959; R.C.M. 1947, 40-4001; amd. Sec. 26, Ch. 451, L. 1993; amd. Sec. 4, Ch. 527, L. 1995; amd. Sec. 9, Ch. 198, L. 1997; amd. Sec. 4, Ch. 410, L. 1997; amd. Sec. 3, Ch. 416, L. 1997; amd. Sec. 2, Ch. 178, L. 1999; amd. Sec. 40, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section — Code Commissioner Correction: Chapter 178 in (1) near middle inserted "33-22-136". Amendment effective March 25, 1999.

Chapter 472 in introductory clause after "33-22-130 through" deleted "33-22-132, 33-22-134". Amendment effective October 1, 1999.

The code commissioner deleted the reference to 33-22-135 to reflect that section's inclusion by the amendment made by Ch. 178.

Cross-References

Disability coverage incidental to another insurance — exclusion from chapter, 33-1-206.

Disability insurance — definition, 33-1-207.

33-22-102. Third-party ownership. The word "insured", as used in parts 1 through 4 of this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

History: En. Sec. 379, Ch. 286, L. 1959; R.C.M. 1947, 40-4029.

Cross-References

Insurable interest — definition, 33-15-201.

33-22-103. Violations. Violations of parts 1 through 4 of this chapter are subject to the penalties provided by 33-1-104.

History: En. Sec. 384, Ch. 286, L. 1959; R.C.M. 1947, 40-4034.

33-22-104 through 33-22-106 reserved.

33-22-107. Premium increase restriction — exception. (1) An insurer or a health service corporation that issues a policy, certificate, or membership contract covering a resident of this state may not increase a premium in an individual's or an individual's group disability insurance policy more frequently than once during a 12-month period unless failure to increase the premium more frequently than once during the 12-month period would:

(a) place the insurer in violation of the laws of this state; or

(b) cause the financial impairment of the insurer to the extent that further transaction of insurance by the insurer injures or is hazardous to its policyholders or to the public.

(2) Subsection (1) does not apply to a premium increase necessitated by a state or federal law, court decision, or rule adopted by an agency of competent jurisdiction of the state or federal government.

History: En. Sec. 2, Ch. 699, L. 1991; amd. Sec. 29, Ch. 531, L. 1997.

33-22-108 reserved.

33-22-109. Riders. (1) Except for group health insurance coverage provided by a group health plan or a health insurance issuer, a policy of disability insurance may contain a provision that excludes coverage for specific conditions through the use of elimination riders for conditions for which medical advice, diagnosis, care, or treatment was recommended by or received from a provider of health care services within 3 years preceding the effective date of coverage of an insured person. The provisions of 33-22-110 do not apply to elimination riders. An insured person may apply to the insurer for removal or modification of a rider, and the insurer shall respond to the application within 60 days of receipt.

(2) An insurer may not, except upon agreement by the insured, retroactively impose an elimination rider on an existing policy, certificate, or contract.

History: En. Sec. 2, Ch. 522, L. 1995; amd. Sec. 4, Ch. 416, L. 1997.

33-22-110. Preexisting conditions. (1) Except as provided in 33-22-246 and 33-22-514, a policy or certificate of disability insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. The condition may only be excluded for a maximum of 12 months.

(2) An insurer may use an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, perform underwriting in accordance with the insurer's established underwriting standards.

(3) A policy of disability income insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. An exclusion may not apply to a disability commencing more than 12 months from the effective date of coverage of an insured person.

History: En. Sec. 34, Ch. 451, L. 1993; amd. Sec. 1, Ch. 522, L. 1995; amd. Sec. 5, Ch. 416, L. 1997.

33-22-111. Policies and certificates to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies or certificates of disability insurance, including individual, group, and blanket policies or certificates, must provide that the insured has full freedom of choice in the selection of any licensed physician, physician assistant-certified, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, acupuncturist, naturopathic physician, or advanced practice registered nurse as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of the person's practice. Whenever the policies or certificates insure against the expense of drugs, the insured has full freedom of choice in the selection of any licensed and registered pharmacist.

(2) This section may not be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1). This section may not be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.

History: (1)En. Sec. 1, Ch. 172, L. 1967; amd. Sec. 1, Ch. 402, L. 1971; Sec. 40-4108, R.C.M. 1947; (2)En. Sec. 2, Ch. 172, L. 1967; Sec. 40-4109, R.C.M. 1947; R.C.M. 1947, 40-4108, 40-4109; amd. Sec. 1, Ch. 258, L. 1981; amd. Sec. 20, Ch. 303, L. 1981; amd. Sec. 4, Ch. 324, L. 1981; amd. Sec. 1, Ch. 179, L. 1983; amd. Sec. 1, Ch. 302, L. 1985; amd. Sec. 14, Ch. 572, L. 1985; amd. Sec. 1, Ch. 606, L. 1987; amd. Sec. 39, Ch. 83, L. 1989; amd. Sec. 18, Ch. 97, L. 1989; amd. Sec. 1, Ch. 362, L. 1991; amd. Sec. 1, Ch. 628, L. 1993; amd. Sec. 1, Ch. 459, L. 1999; amd. Sec. 41, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 459 in three places in (1) after "policies" inserted "or certificates" and after "acupuncturist" inserted "naturopathic physician". Amendment effective January 1, 2000.

Chapter 472 in (1) in first sentence substituted "advanced practice registered nurse" for "nurse specialist". Amendment effective October 1, 1999.

Cross-References

Board of Social Work Examiners and Professional Counselors, 2-15-1854.

Inapplicability of section to health service corporations, 33-30-102.

Licensed medical professions:
Physicians, Title 37, ch. 3.
Dentists, Title 37, ch. 4.
Osteopaths, Title 37, ch. 5.
Chiropodists (podiatrists), Title 37, ch. 6.
Pharmacists, Title 37, ch. 7.
Optometrists, Title 37, ch. 10.
Chiropractors, Title 37, ch. 12.
Clinical psychologists, Title 37, ch. 17.
Licensure of social workers, Title 37, ch. 22.
Professional counseling, Title 37, ch. 23.

Workers' Compensation Act, Title 39, ch. 71.

Hospital licensing, Title 50, ch. 5, part 2.

33-22-112. Disability insurance coverage of services of state institutions — provision void — rate of payment. (1) From and after February 14, 1973, it shall be unlawful for any insurance company issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution, provided the services to the insured would be covered by the disability insurance policy if rendered to him outside a Montana state institution.

(2) A disability insurance policy is considered issued in Montana if the insured purchasing the disability insurance policy is, at the time of the purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section should appear in a disability insurance policy issued in Montana after February 14, 1973, the provision is void and the disability insurance policy will be considered to cover services rendered the insured in a Montana state institution if the services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of the disability policy, which would be paid for the services if rendered outside a Montana state institution.

History: En. Secs. 1, 2, 3, 4, Ch. 50, L. 1973; R.C.M. 1947, 40-4035(part), 40-4036, 40-4037, 40-4038; amd. Sec. 1, Ch. 169, L. 1979.

Cross-References

State institutions — Department of Public Health and Human Services, 53-1-602.

33-22-113. Disability insurance coverage of persons eligible for public medical assistance. No disability insurance policy providing hospital, medical, or surgical expense benefits delivered or issued for delivery in this state on or after July 1, 1979, may contain any provision denying or reducing such benefits for the reason that the person insured is eligible for or receiving public medical assistance provided under Title 53, chapter 2.

History: En. Sec. 2, Ch. 169, L. 1979.

33-22-114. Coverage required for services provided by physician assistants-certified. An insurer, a health service corporation, or any employee health and welfare fund that provides accident or health insurance benefits to residents of this state shall provide, in group and individual insurance contracts, coverage for health services provided by a physician assistant-certified as normally covered by contracts for services supplied by a physician if health care services that the physician assistant-certified is approved to perform are covered by the contract.

History: En. Sec. 7, Ch. 97, L. 1989.

Cross-References

Physician assistant-certified defined, 37-20-401.

33-22-115 through 33-22-120 reserved.

33-22-121. Notice required for cancellation or refusal to renew. (1) An insurer may not cancel or refuse to renew a disability insurance policy until the insurer has mailed or delivered to the named insured and to the policyowner, if they are not the same, at the last-known post office address shown in the records of the company, one written notice in addition to any billing statement, stating the date the cancellation or refusal to renew will become effective, which may not be less than:

(a) 30 days after the date of mailing or delivery of the notice of cancellation for nonpayment of premiums or a material misrepresentation contained in the application; or

(b) 90 days after the date of mailing or delivery of the notice of cancellation or refusal to renew for any reason other than nonpayment of premiums or a material misrepresentation contained in the application.

(2) The notice requirements in subsection (1) run concurrently with any grace period required by 33-22-206.

History: En. Sec. 3, Ch. 723, L. 1985; amd. Sec. 1, Ch. 191, L. 1989.

33-22-122. Contents of notice — proof — limitation on recovery — exemptions. (1) (a) The notice of cancellation shall state:

(i) the amount of the premium, installment, or interest due on such policy;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state that unless the premium or other sums are paid to the company or its insurance producer, the policy will lapse or be forfeited.

(2) "Policyowner", as used in this section, means the owner of the policy or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) The affidavit of any responsible officer, clerk, or insurance producer of the insurance company authorized to mail the notice that it is the standard practice of the company to mail to policyowners the notice required by this section is prima facie evidence that the notice has been duly given.

(4) No action may be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) Section 33-22-121 does not apply to:

(a) group or group-type policies;

(b) industrial life or industrial disability policies; or

(c) policies upon which premiums are payable monthly or at more frequent intervals.

History: En. Sec. 4, Ch. 723, L. 1985; amd. Sec. 1, Ch. 713, L. 1989.

33-22-123 and 33-22-124 reserved.

33-22-125. Independent chiropractic physical examination or review of records. (1) If a patient's attending health care professional is a licensed chiropractor, the following provisions govern the conduct of a utilization review of the health care services rendered to the patient by the chiropractor:

(a) If an independent physical examination is required by the insurer, it must be conducted by a chiropractor engaged in the practice of chiropractic in Montana.

(b) If a review of the patient's or the chiropractor's records is required by the insurer in the course of an appeal or a redetermination of an adverse determination of medical necessity or appropriateness made pursuant to an insurer's review, the review must be conducted by a person trained in the field of chiropractic. During an appeal or redetermination, the patient may, at his expense, request an independent review of the patient's or the chiropractor's records by a chiropractor engaged in the practice of chiropractic in Montana and may require that review to be considered by the insurer in reaching its decision. If the initial adverse determination of medical necessity or appropriateness is reversed, the insurer shall bear the expense of the independent review.

(2) Nothing in this section prevents a health care insurer from requesting additional medical review of a patient's condition or treatment by another chiropractor or medical provider.

(3) The provisions of this section do not apply to routine claim administration or determination by an insurer.

(4) As used in this section, "health care insurer" means:

(a) an insurer who provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in 33-31-102;

(d) a fraternal benefit society as defined in 33-7-108;

(e) an administrator as defined in 33-17-102; and

(f) any other entity regulated by the commissioner that provides health care coverage.

History: En. Sec. 1, Ch. 727, L. 1991.

33-22-126 through 33-22-129 reserved.

33-22-130. Coverage for adopted children from time of placement — preexisting conditions. (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for an adopted child of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement and may not impose a preexisting condition exclusion.

(3) As used in this section, "placement" means the transfer of physical custody of a child who is legally free for adoption to a person who intends to adopt the child.

History: En. Sec. 1, Ch. 387, L. 1991; amd. Sec. 27, Ch. 451, L. 1993; amd. Sec. 6, Ch. 416, L. 1997; amd. Sec. 161, Ch. 480, L. 1997.

33-22-131. Coverage for treatment of inborn errors of metabolism. (1) Each group or individual medical expense disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for the treatment of inborn errors of metabolism that involve amino acid, carbohydrate, and fat metabolism and for which medically standard methods of diagnosis, treatment, and monitoring exist.

(2) Coverage must include expenses of diagnosing, monitoring, and controlling the disorders by nutritional and medical assessment, including but not limited to clinical services, biochemical analysis, medical supplies, prescription drugs, corrective lenses for conditions related to the inborn error of metabolism, nutritional management, and medical foods used in treatment to compensate for the metabolic abnormality and to maintain adequate nutritional status.

(3) For purposes of this section:

(a) "medical foods" means nutritional substances in any form that are:

(i) formulated to be consumed or administered enterally under supervision of a physician;

(ii) specifically processed or formulated to be distinct in one or more nutrients present in natural food;

(iii) intended for the medical and nutritional management of patients with limited capacity to metabolize ordinary foodstuffs or certain nutrients contained in ordinary foodstuffs or who have other specific nutrient requirements as established by medical evaluation; and

(iv) essential to optimize growth, health, and metabolic homeostasis;

(b) "treatment" means licensed professional medical services under the supervision of a physician.

(4) These services are subject to the terms of the applicable group or individual disability policy, certificate, or membership contract that establishes durational limits, dollar limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

(5) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, or specified disease policies.

History: En. Sec. 1, Ch. 80, L. 1989; amd. Sec. 28, Ch. 451, L. 1993; amd. Sec. 56, Ch. 379, L. 1995; amd. Sec. 2, Ch. 434, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 434 at end of (1) substituted "inborn errors of metabolism that involve amino acid, carbohydrate, and fat metabolism and for which medically standard methods of diagnosis, treatment, and monitoring exist" for "phenylketonuria"; inserted (2) concerning what coverage must include; inserted (3)(a) defining medical foods; in (3)(b) in definition of treatment at end deleted "and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status"; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 6, Ch. 434, L. 1999, provided that this section is effective January 1, 2000, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

Cross-References

Health maintenance organizations — coverage for phenylketonuria treatment, 33-31-102.

33-22-132. Coverage for mammography examinations. (1) Each group or individual medical expense, cancer, and blanket disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide minimum mammography examination coverage.

(2) For the purpose of this section, "minimum mammography examination" means:

(a) one baseline mammogram for a woman who is 35 years of age or older and under 40 years of age;

(b) a mammogram every 2 years for any woman who is 40 years of age or older and under 50 years of age or more frequently if recommended by the woman's physician; and

(c) a mammogram each year for a woman who is 50 years of age or older.

(3) A minimum $70 payment or the actual charge if the charge is less than $70 must be made for each mammography examination performed before the application of the terms of the applicable group or individual disability policy, certificate of insurance, or membership contract that establish durational limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

(4) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, or specified disease policies.

History: En. Sec. 1, Ch. 663, L. 1991; amd. Sec. 29, Ch. 451, L. 1993; amd. Sec. 57, Ch. 379, L. 1995.

33-22-133. Coverage for minimum hospital stay following childbirth. (1) For the purposes of this section, "attending health care provider" means a person licensed under Title 37 who is responsible for providing obstetrical and pediatric care to a mother and newborn infant.

(2) Each group or individual policy, certificate of disability insurance, subscriber contract, membership contract, or health care services agreement that provides coverage for maternity services, including benefits for childbirth, must provide coverage for at least 48 hours of inpatient hospital care following a vaginal delivery and at least 96 hours of inpatient hospital care following delivery by cesarean section for a mother and newborn infant in a health care facility as defined in 50-5-101.

(3) A decision to shorten the length of inpatient stay to less than that provided under subsection (2) must be made by the attending health care provider and the mother. A health benefit plan, as defined in 33-22-1803, may not terminate the service of an attending health care provider or penalize or otherwise provide financial disincentives to an attending health care provider in response to orders by the attending health care provider for care consistent with the provisions of this section.

(4) A health benefit plan that provides coverage for postdelivery care that is provided to a mother and newborn infant in the home may not be required to provide coverage of inpatient care under subsection (2) unless the inpatient care is determined to be medically necessary by the attending health care provider.

(5) A health benefit plan, as defined in 33-22-243, must provide written notice, in a manner consistent with the provisions of this chapter, to all enrollees, insureds, or subscribers regarding the coverage required by this section.

History: En. Sec. 1, Ch. 183, L. 1997.

33-22-134. Postmastectomy care. Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, also the primary care physician, in consultation with the patient, to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer. This section also applies to the state employee group insurance program, the university system employee group insurance program, any employee group insurance program of a city, town, county, school district, or other political subdivision of the state, and any self-funded multiple employer welfare arrangement that is not regulated by the Employee Retirement Income Security Act of 1974.

History: En. Sec. 1, Ch. 410, L. 1997.

Cross-References

University System and local government employee group insurance, 2-18-702.

State group insurance, Title 2, ch. 18, part 8.

Multiple employer welfare arrangements, Title 33, ch. 35.

33-22-135. Coverage for reconstructive breast surgery after mastectomy. (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for reconstructive breast surgery resulting from a mastectomy that resulted from breast cancer.

(2) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for all stages of one reconstructive breast surgery on the nondiseased breast to establish symmetry with the diseased breast after definitive reconstructive breast surgery on the diseased breast has been performed.

(3) For the purposes of this section:

(a) "mastectomy" means the surgical removal of all or part of a breast as a result of breast cancer;

(b) "reconstructive breast surgery" means surgery performed as a result of a mastectomy to reestablish symmetry between the breasts. The term includes augmentation mammoplasty, reduction mammoplasty, and mastopexy.

(4) Benefits for reconstructive breast surgery include but are not limited to the costs of prostheses and, under any contract providing outpatient x-ray or radiation therapy, benefits for outpatient chemotherapy following surgical procedures in connection with the treatment of breast cancer that must be included as a part of the outpatient x-ray or radiation therapy benefit.

History: En. Sec. 2, Ch. 410, L. 1997.

33-22-136. Insurance for spouse and dependents of deceased peace officer, game warden, or firefighter. (1) Any insurer, health service corporation, or health maintenance organization issuing group disability coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. This section also applies to a state employee group insurance program, a university system group insurance program, an employee group insurance program of a city, town, county, school district, or other political subdivision of the state, and any self-funded multiple employer welfare arrangement not regulated by the Employee Retirement Income Security Act of 1974 that provides coverage for a peace officer, game warden, firefighter, or volunteer firefighter. Except as provided in subsection (2), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as are available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of 33-22-523(2) and (3). The provisions of this subsection are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(2) A disability insurance issuer subject to the provisions of subsection (1) may discontinue or not renew the coverage of a spouse or dependent only if:

(a) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the disability insurance coverage or if the disability insurer has not received timely premium payments;

(b) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(c) the disability insurance issuer is ceasing to offer coverage in the group disability market in accordance with applicable state law.

History: En. Sec. 1, Ch. 178, L. 1999.

Compiler's Comments

Effective Date: Section 5, Ch. 178, L. 1999, provided that this section is effective on passage and approval. Approved March 25, 1999.

33-22-137 through 33-22-139 reserved.

33-22-140. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" has the meaning given the term by 29 U.S.C. 1002(33).

(2) "Church plan" has the meaning given the term by 29 U.S.C. 1002(33).

(3) "COBRA continuation provision" means:

(a) section 4980B of the Internal Revenue Code, 26 U.S.C. 4980B, other than subsection (f)(1) of that section as it relates to pediatric vaccines;

(b) Title I, subtitle B, part 6, excluding section 609, of the Employee Retirement Income Security Act of 1974, Public Law 93-406; or

(c) Title XXII of the Public Health Service Act, 42 U.S.C. 300dd, et seq.

(4) (a) "Creditable coverage" means coverage of the individual under any of the following:

(i) a group health plan;

(ii) health insurance coverage;

(iii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4;

(iv) Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, other than coverage consisting solely of a benefit under section 1928, 42 U.S.C. 1396s;

(v) Title 10, chapter 55, United States Code;

(vi) a medical care program of the Indian health service or of a tribal organization;

(vii) the Montana comprehensive health association provided for in 33-22-1503;

(viii) a health plan offered under Title 5, chapter 89, of the United States Code;

(ix) a public health plan;

(x) a health benefit plan under section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e).

(b) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits.

(5) "Elimination rider" means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.

(6) "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for enrollment.

(7) "Excepted benefits" means:

(a) coverage only for accident or disability income insurance, or both;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for onsite medical clinics;

(h) other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits, as approved by the commissioner;

(i) if offered separately, any of the following:

(i) limited-scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these types of care; or

(iii) other similar, limited benefits as approved by the commissioner;

(j) if offered as independent, noncoordinated benefits, any of the following:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance;

(k) if offered as a separate insurance policy:

(i) medicare supplement coverage;

(ii) coverage supplemental to the coverage provided under Title 10, chapter 55, of the United States Code; and

(iii) similar supplemental coverage provided under a group health plan.

(8) "Federally defined eligible individual" means an individual:

(a) for whom, as of the date on which the individual seeks coverage in the group market or individual market or under an association portability plan, as defined in 33-22-1501, the aggregate of the periods of creditable coverage is 18 months or more;

(b) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any of those plans;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) who does not have other health insurance coverage;

(e) for whom the most recent coverage within the period of aggregate creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(f) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(g) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(f) if the individual elected the continuation coverage described in subsection (8)(f).

(9) "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.

(10) "Group health plan" means an employee welfare benefit plan, as defined in, 29 U.S.C. 1002(1), to the extent that the plan provides medical care and items and services paid for as medical care to employees or their dependents, directly or through insurance, reimbursement, or otherwise.

(11) "Health insurance coverage" means benefits consisting of medical care, including items and services paid for as medical care, that are provided directly, through insurance, reimbursement, or otherwise, under a policy, certificate, membership contract, or health care services agreement offered by a health insurance issuer.

(12) "Health insurance issuer" means an insurer, a health service corporation, or a health maintenance organization.

(13) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

(14) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with group health insurance coverage.

(15) "Large employer" means, in connection with a group health plan, with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(16) "Large group market" means the health insurance market under which individuals obtain health insurance coverage directly or through any arrangement on behalf of themselves and their dependents through a group health plan or group health insurance coverage issued to a large employer.

(17) "Late enrollee" means an eligible employee or dependent, other than a special enrollee under 33-22-523, who requests enrollment in a group health plan following the initial enrollment period during which the individual was entitled to enroll under the terms of the group health plan if the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent is not considered a late enrollee if a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(18) "Medical care" means:

(a) the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in subsection (18)(a); or

(c) insurance covering medical care referred to in subsections (18)(a) and (18)(b).

(19) "Network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(20) "Plan sponsor" has the meaning provided under section 3(16)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(16)(B).

(21) "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on presence of a condition before the enrollment date coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the enrollment date.

(22) "Small group market" means the health insurance market under which individuals obtain health insurance coverage directly or through an arrangement, on behalf of themselves and their dependents, through a group health plan or group health insurance coverage maintained by a small employer as defined in 33-22-1803.

(23) "Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the group health plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the group health plan.

History: En. Sec. 33, Ch. 416, L. 1997; amd. Sec. 42, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in definition of individual market at end substituted "insurance coverage" for "plan"; in definition of large group market at end substituted "or group health insurance coverage issued to a large employer" for "maintained by a large employer"; in definition of late enrollee near beginning of first sentence after "dependent" inserted "other than a special enrollee under 33-22-523" and in second sentence after "if" deleted "(a) the individual requests enrollment within 63 days after termination of the creditable coverage and:

(i) the individual was covered under creditable coverage at the time of the initial enrollment; or

(ii) the individual lost coverage under creditable coverage as a result of termination of employment or eligibility, reduction in the number of hours of employment, involuntary termination of the creditable coverage, the death of a spouse, divorce, or legal separation;

(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period"; in definition of small group market near end after "health plan" inserted "or group health insurance coverage"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Individual policy requirements, Title 33, ch. 22, part 2.

Group disability insurance, Title 33, ch. 22, part 5.

Small Employer Health Insurance Availability Act, Title 33, ch. 22, part 18.

Child support — medical coverage, 40-5-208.

Medical Support Reform Act, Title 40, ch. 5, part 8.

33-22-141. Crediting previous coverage. (1) A period of creditable coverage may not be counted, with respect to enrollment of an individual under a group health plan, if there was a 63-day break in coverage, during which the individual was not covered under any creditable coverage.

(2) The time that an individual is in a waiting period for coverage under a group health plan or for group health insurance coverage or is in an affiliation period, as defined in 33-31-102, may not be considered in determining the continuous period under subsection (1).

(3) Except as provided in subsection (4), for the purposes of applying 33-22-514, a group health plan or a health insurance issuer offering group health insurance coverage shall count a period of creditable coverage without regard to the specific benefits coverage during the period.

(4) (a) A group health plan or a health insurance issuer offering group health insurance may elect to apply the provisions of 33-22-514 based on coverage of benefits within each of several classes or categories of benefits specified in regulations implementing Public Law 104-191, rather than as provided under subsection (3). If electing to apply the provisions of 33-22-514 pursuant to this subsection (4), a group health plan or a health insurance issuer shall:

(i) make the election on a uniform basis for all participants and beneficiaries; and

(ii) count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

(b) In the case of an election under this subsection (4), a group health plan shall:

(i) prominently state in a disclosure statement concerning the group health plan to each enrollee at the time of enrollment that the group health plan has made an election; and

(ii) include a description of the effect of the election in the statement.

(c) In the case of an election under this subsection (4), a health insurance issuer shall:

(i) prominently state in a disclosure statement concerning the health insurance coverage to each employer at the time of the offer or sale of the health insurance coverage that the health insurance issuer has made an election; and

(ii) include a description of the effect of the election in the statement.

(5) Periods of creditable coverage with respect to an individual must be established through presentation of certifications described in 33-22-142 or in such other manner as may be specified in regulations implementing Public Law 104-191.

History: En. Sec. 34, Ch. 416, L. 1997.

33-22-142. Certification of creditable coverage. (1) A group health plan and a health insurance issuer offering group health insurance coverage shall provide the certification described in subsection (3):

(a) at the time that an individual ceases to be covered under the group health plan or otherwise becomes covered under a COBRA continuation provision;

(b) in the case of an individual becoming covered under a COBRA continuation provision, at the time that the individual ceases to be covered under a COBRA continuation provision; and

(c) at the request on behalf of an individual made not later than 24 months after the date of termination of the coverage described in subsection (1)(a) or (1)(b), whichever is later.

(2) The certification pursuant to subsection (1)(a) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(3) Certification is the written:

(a) certification of the period of creditable coverage of the individual under a group health plan and the coverage under the COBRA continuation provision;

(b) certification of the waiting period, if any, and affiliation period, as defined in 33-31-102, if applicable, imposed with respect to the individual for any coverage under a group health plan; and

(c) notification to the individual of:

(i) the individual's option to apply to the Montana comprehensive health association, provided for in 33-22-1503, for an association portability plan, as defined in 33-22-1501, within 63 days of termination of creditable coverage;

(ii) the individual's conversion rights;

(iii) the availability of COBRA continuation coverage;

(iv) the telephone number and address of the Montana comprehensive health association; and

(v) other notification as determined necessary and in the form prescribed by rule by the commissioner.

(4) To the extent that medical care under a group health plan consists of group health insurance coverage, a group health plan satisfies the certification requirement of this section if the health insurance issuer offering the coverage provides the certification in accordance with this section.

(5) In the case of an election described in 33-22-141 by a group health plan or health insurance issuer, if the group health plan or health insurance issuer enrolls an individual for coverage under the group health plan and the individual provides a certification of coverage of the individual, the entity that issued the certification shall upon request of the group health plan or health insurance issuer promptly disclose information on coverage of classes and categories of health benefits available under the certified coverage. The entity may charge the requesting group health plan or health insurance issuer the reasonable cost of disclosing the information.

(6) This section applies to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the group market.

History: En. Sec. 36, Ch. 416, L. 1997.

33-22-143. Rules. The commissioner may adopt rules to implement 33-22-140 through 33-22-142, 33-22-246, 33-22-247, 33-22-514, 33-22-523 through 33-22-526, and 33-22-1523.

History: En. Sec. 45, Ch. 416, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2

Individual Policy Requirements

Part Cross-References

Approval of forms by Commissioner, Title 33, ch. 1, part 5.

Life and disability insurance policy language simplification, 33-15-321 through 33-15-329.

33-22-201 . Format and content. An individual policy of disability insurance may not be delivered or issued for delivery to any person in this state unless it otherwise complies with this code and complies with the following:

(1) The entire money and other considerations for the policy must be expressed in the policy.

(2) The time when the insurance takes effect and terminates must be expressed in the policy.

(3) The policy may insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who is the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age that may not exceed 25 years, and any other person dependent upon the policyholder.

(4) The style, arrangement, and overall appearance of the policy may not give undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers must be plainly printed in lightfaced type of a style in general use, the size of which must be uniform and not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

(5) The "text" must include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity must be set forth in the policy and, other than those contained in 33-22-204 through 33-22-215 and 33-22-221 through 33-22-231, must be printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction must be included with the benefit provision to which it applies.

(7) The policy may not contain a provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of or reference to a statement of rates or classification of risks or short-rate table filed with the commissioner.

History: En. Sec. 352, Ch. 286, L. 1959; amd. Sec. 1, Ch. 74, L. 1973; amd. Sec. 1, Ch. 83, L. 1974; R.C.M. 1947, 40-4002(1) thru (3), (5) thru (8); amd. Sec. 1, Ch. 342, L. 1979; amd. Sec. 30, Ch. 451, L. 1993; amd. Sec. 58, Ch. 379, L. 1995.

33-22-202. Required provisions — captions — omissions — substitutions — order. (1) Except as provided in subsection (2), each policy delivered or issued for delivery to any person in this state must contain the provisions specified in 33-22-204 through 33-22-215, as those provisions appear, except that the insurer may, at its option, substitute for one or more of the provisions corresponding provisions of different wording approved by the commissioner and not less favorable in any respect to the insured or the beneficiary. Each provision must be preceded by the applicable caption shown or, at the option of the insurer, by the appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from the policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in a manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(3) The provisions that are the subject of 33-22-204 through 33-22-215 and 33-22-221 through 33-22-232 or any corresponding provisions which are used in accordance with the cited sections must be printed in the consecutive order of the provisions in the sections or, at the option of the insurer, any provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, provided that the resulting policy is not in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

History: En. Secs. 353, 378, Ch. 286, L. 1959; R.C.M. 1947, 40-4003, 40-4028; amd. Sec. 26, Ch. 198, L. 1979; amd. Sec. 31, Ch. 451, L. 1993; amd. Sec. 59, Ch. 379, L. 1995.

Cross-References

Hearings by Commissioner, 33-1-701.

Policy language simplification, 33-15-321 through 33-15-329.

33-22-203. Requirement of other jurisdictions — statutes — violation. (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of parts 1 through 4 of this chapter and which is prescribed or required by the law of the state or country under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(3) No policy provision which is not subject to parts 1 through 4 of this chapter shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

(4) A policy delivered or issued for delivery to any person in this state in violation of parts 1 through 4 of this chapter shall be held valid but shall be construed as provided in parts 1 through 4 of this chapter. When any provision in a policy subject to parts 1 through 4 of this chapter is in conflict with any provision of parts 1 through 4 of this chapter, the rights, duties, and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of parts 1 through 4 of this chapter.

History: En. Secs. 380, 381, Ch. 286, L. 1959; R.C.M. 1947, 40-4030, 40-4031.

33-22-204. Entire contract — changes. There shall be a provision as follows:

"Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No insurance producer has authority to change this policy or to waive any of its provisions."

History: En. Sec. 354, Ch. 286, L. 1959; R.C.M. 1947, 40-4004; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Interpretation of written contracts — statute of frauds, Title 28, ch. 2, part 9.

33-22-205. Time limit on certain defenses. (1) There shall be a provision as follows:

"Time Limit on Certain Defenses: (1) After 2 years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such 2-year period.

(2) No claim for loss incurred or disability (as defined in the policy) commencing after 2 years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(2) Policy provision (1) of subsection (1) shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial 2-year period or to limit the application of 33-22-222 through 33-22-226 in the event of misstatement with respect to age or occupation or other insurance.

(3) A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue, may contain in lieu of policy provision (1) of subsection (1) the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "Incontestable":

"After this policy has been in force for a period of 2 years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

History: En. Sec. 355, Ch. 286, L. 1959; R.C.M. 1947, 40-4005; amd. Sec. 21, Ch. 303, L. 1981.

33-22-206. Grace period. (1) There shall be a provision as follows:

"Grace Period: A grace period of .... (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies, and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

(2) A policy in which the insurer reserves the right to refuse renewal shall have, at the beginning of the above provision:

"Unless not less than 30 days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."

History: En. Sec. 356, Ch. 286, L. 1959; R.C.M. 1947, 40-4006.

Cross-References

Computation of time — which days counted, 1-1-306.

33-22-207. Reinstatement. (1) There shall be a provision as follows:

"Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any insurance producer duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such insurance producer requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the 45th day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than 10 days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement."

(2) The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

(a) until at least age 50; or

(b) in the case of a policy issued after age 44, for at least 5 years from its date of issue.

History: En. Sec. 357, Ch. 286, L. 1959; R.C.M. 1947, 40-4007; amd. Sec. 1, Ch. 713, L. 1989.

33-22-208. Notice of claim. (1) There shall be a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within 6 months after the occurrence or commencement of any loss covered by the policy or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at .... (insert the location of such office as the insurer may designate for the purpose) or to any authorized insurance producer of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

(2) In a policy providing a loss-of-time benefit which may be payable for at least 2 years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, he shall, at least once in every 6 months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of 6 months preceding the date on which such notice is actually given."

History: En. Sec. 358, Ch. 286, L. 1959; amd. Sec. 1, Ch. 189, L. 1974; R.C.M. 1947, 40-4008; amd. Sec. 1, Ch. 713, L. 1989.

33-22-209. Claim forms. There shall be a provision as follows:

"Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within 15 days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made."

History: En. Sec. 359, Ch. 286, L. 1959; R.C.M. 1947, 40-4009.

33-22-210. Proofs of loss. There shall be a provision as follows:

"Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than 1 year from the time proof is otherwise required."

History: En. Sec. 360, Ch. 286, L. 1959; R.C.M. 1947, 40-4010.

Cross-References

Requirement for redundant proofs of loss — unfair trade practice, 33-18-201.

33-22-211. Time of payment of claims. There shall be a provision as follows:

"Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid .... (insert period for payment which must not be less frequently than monthly), and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

History: En. Sec. 361, Ch. 286, L. 1959; R.C.M. 1947, 40-4011.

Cross-References

Unfair trade practice — delay caused by requiring multiple proofs of loss, 33-18-201.

Administrative penalty for failure to promptly pay claims, 33-18-231 through 33-18-235.

33-22-212. Payment of claims. (1) There shall be a provision as follows:

"Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

(2) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $.... (insert an amount which shall not exceed $1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise, all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proof of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

History: En. Sec. 362, Ch. 286, L. 1959; R.C.M. 1947, 40-4012.

33-22-213. Physical examination and autopsy. There shall be a provision as follows:

"Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

History: En. Sec. 363, Ch. 286, L. 1959; R.C.M. 1947, 40-4013.

Cross-References

Autopsy — limitations, 50-21-103.

33-22-214. Legal actions. There shall be a provision as follows:

"Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of 3 years after the written proof of loss is required to be furnished."

History: En. Sec. 364, Ch. 286, L. 1959; R.C.M. 1947, 40-4014.

33-22-215. Change of beneficiary. (1) There shall be a provision as follows:

"Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change a beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries or to any other changes in this policy."

(2) The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

History: En. Sec. 365, Ch. 286, L. 1959; R.C.M. 1947, 40-4015.

33-22-216. Repealed. Sec. 36, Ch. 451, L. 1993.

History: En. Sec. 3, Ch. 699, L. 1991.

33-22-217 through 33-22-220 reserved.

33-22-221. Optional policy provisions — substitutes. Except as provided in 33-22-202(2), no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in 33-22-222 through 33-22-231, unless such provisions are in the words in which the same appear in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

History: En. Sec. 366, Ch. 286, L. 1959; R.C.M. 1947, 40-4016.

Cross-References

Hearings by Commissioner, 33-1-701.

Policy language simplification provisions — exemption for statutory requirements, 33-15-325.

33-22-222. Change of occupation. There may be a provision as follows:

"Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

History: **En. Sec. 367, Ch. 286, L. 1959; R.C.M. 1947, 40-4017.**

33-22-223. Misstatement of age. There may be a provision as follows:

"Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

History: **En. Sec. 368, Ch. 286, L. 1959; R.C.M. 1947, 40-4018.**

33-22-224. Other insurance in this insurer. (1) There may be a provision as follows:

"Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for .... (insert type of coverage or coverages) in excess of $.... (insert maximum limit of indemnity or indemnities), the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

(2) Or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary, or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

History: **En. Sec. 369, Ch. 286, L. 1959; R.C.M. 1947, 40-4019.**

33-22-225. Insurance with other insurers — provision of service or expense incurred basis. (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in 33-22-226, there shall be added to the caption of the foregoing provision the phrase "—Expense Incurred Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and by hospital or medical service organizations and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental

agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as "other valid coverage".

History: En. Sec. 370, Ch. 286, L. 1959; R.C.M. 1947, 40-4020.

Cross-References

Public assistance — reduction of benefits disallowed, 33-22-113.

33-22-226. Insurance with other insurers — other benefits. (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in 33-22-225, there shall be added to the caption of the foregoing provision the phrase "—Other Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as "other valid coverage".

History: En. Sec. 371, Ch. 286, L. 1959; R.C.M. 1947, 40-4021.

33-22-227. Relation of earnings to insurance. (1) There may be a provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such 2 years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of $200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50, or in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

History: En. Sec. 372, Ch. 286, L. 1959; R.C.M. 1947, 40-4022.

33-22-228. Unpaid premiums. There may be a provision as follows:

"Unpaid Premiums: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

History: En. Sec. 373; Ch. 286, L. 1959; R.C.M. 1947, 40-4023.

33-22-229. Conformity with state statutes. There must be a provision or the equivalent thereto as follows:

"Conformity with Montana statutes: The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: En. Sec. 374, Ch. 286, L. 1959; R.C.M. 1947, 40-4024; amd. Sec. 10, Ch. 518, L. 1983; amd. Sec. 33, Ch. 798, L. 1991.

33-22-230. Illegal occupation. There may be a provision as follows:

"Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

History: En. Sec. 375, Ch. 286, L. 1959; R.C.M. 1947, 40-4025.

Cross-References

Own wrong — no advantage, 1-3-208.

Illegal occupation, 33-22-230.

Felony — definition, 45-2-101.

Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations, 72-2-813.

33-22-231. Intoxicants and narcotics. There may be a provision as follows:

"Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

History: En. Sec. 376, Ch. 286, L. 1959; R.C.M. 1947, 40-4026.

Cross-References

Coverage for alcoholism and drug addiction, Title 33, ch. 22, part 7.

33-22-232. Renewal at option of insurer. Disability insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal shall provide in substance in a provision thereof or in an endorsement thereon or rider attached thereto that subject to the right to terminate the policy upon nonpayment of premium when due, such right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on or after and nearest each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on or after and nearest each anniversary of the last reinstatement), and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. The parenthetic reference to lapse and reinstatement may be omitted at the insurer's option.

History: En. Sec. 377, Ch. 286, L. 1959; R.C.M. 1947, 40-4027; amd. Sec. 22, Ch. 303, L. 1981.

33-22-233 through 33-22-240 reserved.

33-22-241. Definitions. As used in 33-22-242 and 33-22-243, unless the context indicates otherwise, the following definitions apply:

(1) "Block of business" means an individual disability insurance policy certificate or contract filed and approved by the commissioner pursuant to 33-1-501 and written and sold by a health care insurer to a defined set of individuals. All individuals covered by the policy or contract are considered to be within the block of business.

(2) "Health care insurer" means a disability insurer, a health service corporation, a health maintenance organization, or a fraternal benefit society.

(3) (a) "Individual health benefit plan" means any hospital or medical expense policy or certificate, subscriber contract, or contract of insurance provided by a prepaid hospital or medical service plan or health maintenance organization subscriber contract and issued for delivery to an individual.

(b) Individual health benefit plan does not include a self-funded group health plan; a self-funded multiemployer group health plan; a group conversion plan; an insured group health plan; accident only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, medicare supplement, long-term care, or disability income insurance; coverage issued as a supplement to liability insurance; workers' compensation or similar insurance; or automobile medical payment insurance.

(4) "Qualifying previous coverage" means benefits or coverage provided under:

(a) medicare or medicaid;

(b) group health insurance or a health benefit plan that provides benefits similar to or exceeding benefits provided under the plan being applied for; or

(c) an individual health benefit plan, including coverage issued by a health maintenance organization, a prepaid hospital or medical care plan, or a fraternal benefit society, that provides benefits similar to or exceeding the plan being applied for.

History: En. Sec. 1, Ch. 527, L. 1995.

33-22-242. Waiver of preexisting condition exclusion — exclusion prohibited. (1) A health care insurer shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in an individual health benefit plan for the period of time that an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services, if the qualifying previous coverage was continuous to a date not more than 30 days prior to the date of application for new coverage.

(2) A health care insurer that offers individual health insurance coverage to a federally defined eligible individual may not impose a preexisting condition exclusion with respect to that coverage.

History: En. Sec. 2, Ch. 527, L. 1995; amd. Sec. 7, Ch. 416, L. 1997.

33-22-243. Premium increases to be distributed proportionately. (1) A health care insurer may increase the health benefit plan charges for an individual policy, certificate, or contract previously issued by that insurer because of a change in the attained age of the insured. Increases in premium, certificate, or contract charges for individual policies, certificates, or contracts previously issued by that insurer, based on factors other than attained age, must be distributed proportionately across the block of business as defined in 33-22-241.

(2) As used in this section, the following definitions apply:

(a) (i) "Health benefit plan" means a hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract.

(ii) Health benefit plan does not include:

(A) accident only, credit, dental, vision, specified disease, medicare supplement, long-term care, or disability income insurance;

(B) coverage issued as a supplement to liability insurance, workers' compensation insurance, or similar insurance; or

(C) automobile medical payment insurance.

(b) "Health care insurer" or "insurer" means a disability insurer, a health service corporation, a health maintenance organization, or a fraternal benefit society.

(3) The provisions of Title 33, chapter 1, parts 3 and 7, apply to this section.

History: **En. Sec. 3, Ch. 527, L. 1995.**

33-22-244. Disclosure standards — individual policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, an individual disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time the application is made.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

(b) a general description of the insureds financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

(c) a statement of the maximum lifetime benefit available under the policy;

(d) a statement of the estimated periodic premium to be paid by the insured;

(e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant; and

(f) a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) The outline of coverage may include any other information that the insurer considers relevant to the applicants selection of an appropriate individual disability policy.

(4) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

History: **En. Sec. 5, Ch. 527, L. 1995.**

33-22-245. Uniform health benefit plan — individual. (1) Each insurer or health service corporation delivering or issuing for delivery in this state a health benefit plan, as defined in 33-22-243, to an individual shall make available a uniform health benefit plan providing the benefits and services required in subsection (2).

(2) The uniform health benefit plan must:

(a) provide coverage for the services and articles required by 33-22-1521(2);

(b) pay 50% of the covered expenses in excess of an annual deductible that may not exceed $1,000 per person or $2,000 per family;

(c) include a limitation of $5,000 per person or $7,500 per family on the total annual out-of-pocket expenses for services covered; and

(d) be subject to a maximum lifetime benefit of $1 million.

(3) Except as provided in this section, a health insurance issuer may exclude any category of licensed health care practitioner and any benefit or coverage for health care services otherwise required by law or rule from an individual uniform health benefit plan delivered or issued for delivery in this state.

History: En. Sec. 8, Ch. 527, L. 1995; amd. Sec. 1, Ch. 504, L. 1997.

33-22-246. Preexisting conditions relating to individual market. (1) Except as provided in subsection (2), a health insurance issuer offering individual health insurance coverage may not exclude coverage for a preexisting condition unless:

(a) medical advice, diagnosis, care, or treatment was recommended to or received by the participant or beneficiary within the 3 years preceding the effective date of coverage; and

(b) coverage for the condition is excluded for not more than 12 months.

(2) A health insurance issuer offering health insurance coverage may not impose a preexisting condition exclusion on a federally defined eligible individual because of a preexisting condition.

History: En. Sec. 37, Ch. 416, L. 1997.

Cross-References

Preexisting conditions relating to group market, 33-22-514.

33-22-247. Guaranteed renewability of individual health insurance coverage. (1) Except as provided in this section, a health insurance issuer that provides individual health insurance coverage to an individual shall renew or continue the coverage in force at the option of the individual.

(2) A health insurance issuer may nonrenew or discontinue health insurance coverage of an individual in the individual market only if:

(a) the individual has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or if the health insurance issuer has not received timely premium payments;

(b) the individual has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage;

(c) the health insurance issuer is ceasing to offer coverage in the individual market in accordance with this section and applicable state law;

(d) in the case of a health insurance issuer that offers health insurance coverage in the individual market through a network plan, the individual no longer lives, resides, or works in the service area of the health insurance issuer or in an area for which the health insurance issuer is authorized to do business, but only if the coverage is terminated under this subsection (2)(d) uniformly without regard to any health status-related factor of covered individuals; or

(e) in the case of health insurance coverage that is made available in the individual market only through one or more bona fide associations, as defined in 33-22-1803, the membership of the individual in the bona fide association ceases, but only if the coverage is terminated under this subsection (2)(e) uniformly without regard to any health status-related factor of a covered individual.

(3) A health insurance issuer may not discontinue offering a particular type of individual health insurance coverage offered in the individual market unless in accordance with applicable state law and unless:

(a) the health insurance issuer gives notice to each covered individual provided coverage of this type in the individual market of the discontinuation at least 90 days prior to the date of the discontinuation of the coverage;

(b) the health insurance issuer offers to each individual in the individual market provided coverage of this type the option to purchase any other individual health coverage currently being offered by the health insurance issuer to individuals in the individual market; and

(c) in exercising the option to discontinue coverage of this type and in offering the option of coverage under subsection (3)(b), the health insurance issuer acts uniformly, without regard to the claims experience of individuals or any health status-related factor of individuals who may become eligible for the coverage.

(4) (a) A health insurance issuer may not discontinue offering all health insurance coverage in the individual market unless in accordance with applicable state law and unless:

(i) the health insurance issuer provides notice of discontinuation to the commissioner and each covered individual at least 180 days prior to the date of the discontinuation of coverage; and

(ii) all health insurance issued or delivered for issuance in Montana in the individual market is discontinued and coverage under the health insurance coverage in the individual market is not renewed.

(b) In the case of a discontinuation under subsection (4)(a) in the individual market, the health insurance issuer may not provide for the issuance of any health insurance coverage in the individual market during the 5-year period beginning on the date of the discontinuation of the last health insurance coverage not renewed.

(5) A health insurance issuer may modify upon renewal health insurance coverage for a policy form offered to individuals in the individual market if the modification is consistent with applicable state law and effective on a uniform basis among all individuals with that policy form.

(6) In the case of health insurance coverage that is made available by a health insurance issuer in the individual market to individuals only through one or more bona fide associations, references to "individual" under this section include a reference to the bona fide association of which the individual is a member.

History: En. Sec. 38, Ch. 416, L. 1997.

Cross-References

Guaranteed renewability of coverage for employers in group market, 33-22-524.

Guaranteed renewability in multiple employer welfare arrangements, 33-22-525.

Part 3

Requirements for Certain Individual Coverages

33-22-301. Coverage of newborn under disability policy. (1) Each policy of disability insurance or certificate issued must contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(2) The coverage for newborn infants must be the same as provided by the policy for the other covered persons. However, that for newborn infants there may not be waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(3) A policy or certificate of insurance may not be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth.

(4) The policy or contract may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days.

History: (1), (2)En. 40-4002.1 by Sec. 2, Ch. 74, L. 1973; amd. Sec. 2, Ch. 83, L. 1974; Sec. 40-4002.1, R.C.M. 1947; (3)En. Sec. 352, Ch. 286, L. 1959; amd. Sec. 1, Ch. 74, L. 1973; amd. Sec. 1, Ch. 83, L. 1974; Sec. 40-4002, R.C.M. 1947; R.C.M. 1947, 40-4002.1, 40-4002(4); (4)En. Sec. 23, Ch. 303, L. 1981; amd. Sec. 4, Ch. 139, L. 1987; amd. Sec. 60, Ch. 379, L. 1995.

Cross-References

Child support enforced by Department of Public Health and Human Services — insurance coverage required, 40-5-208.

33-22-302. Age limits — effect on coverage. If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

History: En. Sec. 382, Ch. 286, L. 1959; R.C.M. 1947, 40-4032.

33-22-303. Coverage for well-child care. (1) Each medical expense policy of disability insurance or certificate issued under the policy that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a policy of disability insurance or a certificate issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state.

History: En. Sec. 1, Ch. 199, L. 1991; amd. Sec. 61, Ch. 379, L. 1995.

33-22-304. Continuation of coverage for individuals with disabilities — individual contracts. (1) An individual hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified in the policy or contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical disability and chiefly dependent upon the policyholder or subscriber for support and maintenance. Proof of retardation or the disability and dependency must be furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts.

History: (1)En. 40-3738 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3738, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3738, 40-3740; amd. Sec. 22, Ch. 472, L. 1997.

33-22-305. Short title. Sections 33-22-305 through 33-22-311 may be cited as the "Individual Family Disability Insurance Continuity of Coverage Act".

History: En. Sec. 1, Ch. 245, L. 1981.

33-22-306. Purpose. The purpose of 33-22-305 through 33-22-311 is to provide for the right of covered family members under individual family disability insurance policies to continuity of coverage upon the death of the named insured, the divorce, annulment of marriage, or legal separation of the spouse from the named insured, or any other condition specifically stated in such disability insurance policies under which coverage would otherwise terminate as to the covered spouse or covered dependent children of the named insured.

History: En. Sec. 2, Ch. 245, L. 1981.

33-22-307. Continuity of coverage. (1) Subject to the requirements of 33-22-305 through 33-22-311 and on the date specified in the policy under which coverage otherwise terminates because of the death of the named insured or for any other reason specified in 33-22-306, as to covered family members, other than for nonpayment of premium, nonrenewal of the policy, or the expiration of the term for which the policy is issued, a covered person, other than one eligible for medicare or any other similar federal or state disability insurance program, including the spouse and any covered dependent child of the last-named insured or the representative of the child, has the right to continuation of coverage under provisions that, at the option of the carrier, are consistent with:

(a) the continuation of the policy, with the person exercising the right of continuation designated as the named insured;

(b) the issuance of a converted policy with the person exercising the conversion right designated as the named insured; or

(c) both (1)(a) and (1)(b).

(2) When continuation of coverage or conversion is made in the name of the spouse of the named insured, the coverage may, at the option of the spouse, include covered dependent children for whom the spouse has the responsibility for care and support.

History: En. Sec. 3, Ch. 245, L. 1981; amd. Sec. 43, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) near beginning of introductory clause after "terminates" inserted "because of the death of the named insured or for any other reason specified in 33-22-306"; and made minor changes in style. Amendment effective October 1, 1999.

33-22-308. Form of coverage — requirements — evidence of insurability — preexisting conditions. (1) Coverage continued through the issuance of a converted policy shall consist of the form of coverage then being offered by the carrier as a conversion policy in the jurisdiction where the person exercising the conversion right resides that most nearly approximates the coverage of the policy from which conversion is exercised. Continued and converted coverages, other than those provided through the exercise of continuation or conversion rights contained in optionally renewable or limited right of renewal contracts, must contain:

(a) provisions allowing the person exercising the continuation or conversion the right to renew the coverage until the attainment of the age of eligibility for medicare or any other similar federal or state disability insurance program, subject to the right of the carrier to nonrenew all such policies in this state as a class; or

(b) other renewal provisions that are not less favorable to the insured than those contained in the policy from which conversion is exercised.

(2) Coverage provided through continuation or conversion may not require additional evidence of insurability except as to overinsurance and may not impose any preexisting condition limitations or other contractual time limitations other than those remaining unexpired under the policy or contract from which continuation or conversion is exercised.

History: En. Sec. 4, Ch. 245, L. 1981.

33-22-309. Notice. The eligible covered family member exercising the continuation or conversion right must notify the carrier and make payment of the applicable premium within 31 days following the date such coverage otherwise terminates as specified in the policy or contract from which continuation or conversion is being exercised.

History: En. Sec. 5, Ch. 245, L. 1981.

33-22-310. Nonduplication. Benefits otherwise payable under a converted policy may be reduced:

(1) so they are not, during the first policy year of the converted policy, in excess of those benefits that would have been payable had the coverage under the policy from which conversion is exercised not terminated; and

(2) by the amount of benefits, if any, payable as to the same loss under the policy from which conversion is exercised.

History: En. Sec. 6, Ch. 245, L. 1981.

33-22-311. Overinsurance. The carrier is not required to issue a converted policy if at the time of application the applicant:

(1) (a) has coverage under other disability insurance policies, health service corporation contracts, or self-insured health benefit plans providing similar benefits;

(b) is eligible for coverage under a group policy or contract providing similar benefits;

(c) is provided with similar benefits required by any statute; or

(d) is covered under any national, state, or governmental plan; and

(2) has coverage under subsection (1) that, together with the converted policy, would result in overinsurance according to the carrier's underwriting standards.

History: En. Sec. 7, Ch. 245, L. 1981.

Part 4

Franchise Disability Insurance

33-22-401. Franchise disability insurance. (1) Disability insurance on a franchise plan is hereby declared to be that form of disability insurance:

(a) issued to:

(i) 5 or more employees of any corporation, partnership, or individual employer or any governmental corporation, agency, or department thereof; or

(ii) 10 or more members, employees, or employees of members of any trade or professional association or of a labor union or of any other association having had an active existence for at least 2 years where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance;

(b) where such persons, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by such persons under an arrangement whereby the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members or by some designated person acting on behalf of such employer, association, or union.

(2) The term "employees" as used herein may be deemed to include the officers, managers, and employees and retired employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership.

History: En. Sec. 383, Ch. 286, L. 1959; R.C.M. 1947, 40-4033.

Part 5

Group Disability Insurance

33-22-501. Group disability insurance defined — eligible groups. Group disability insurance is that form of disability insurance covering groups of persons as defined in this section, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of the groups of persons and issued upon the following bases:

(1) under a policy issued to an employer or trustees of a fund established by an employer, who must be considered the policyholder, insuring employees of the employer for the benefit of persons other than the employer. The term "employees" as used in this subsection includes the officers, managers, and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners, and employees of individuals and firms, if the business of the employer and the individual or firm is under common control through stock ownership, contract, or otherwise. The term "employees" as used in this subsection may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees"

includes elected or appointed officials. The policy may provide that the term "employees" includes the trustees or their employees, or both, if their duties are principally connected with the trusteeship.

(2) under a policy issued to an association, including a labor union, that has been organized and is maintained in good faith for purposes other than that of obtaining insurance or of insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used in this subsection may include retired employees.

(3) under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in subsection (2), in which the trustees are considered the policyholder, to insure employees of the employers or members of the unions or of the association or employees of members of the association for the benefit of persons other than the employers or the unions or the association. The term "employees" as used in this subsection may include the officers, managers, and employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used in this subsection may include retired employees. The policy may provide that the term "employees" includes the trustees or their employees, or both, if their duties are principally connected with the trusteeship.

(4) under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under a group life policy;

(5) under a policy issued to a voluntary purchasing pool or to the member employers of a voluntary purchasing pool that is formed solely for the purpose of obtaining insurance as provided in 33-22-1815;

(6) under a policy issued to cover any other substantially similar group that, in the discretion of the commissioner, may be subject to the issuance of a group disability policy or contract.

History: En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973; amd. Sec. 3, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(intro.), (1) thru (5); amd. Sec. 1, Ch. 375, L. 1995.

Cross-References

Hearings by Commissioner, 33-1-701.

Groups eligible for group life insurance, Title 33, ch. 20, part 11.

33-22-502. Required provisions of group policies. Each group disability insurance policy delivered or issued for delivery in this state must contain in substance the following provisions:

(1) a provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and not warranties and that no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary;

(2) a provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group a statement in summary form of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(3) a provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy;

(4) a provision or the equivalent thereto that reads:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: **En. Sec. 386, Ch. 286, L. 1959; amd. Sec. 4, Ch. 74, L. 1973; amd. Sec. 4, Ch. 83, L. 1974; R.C.M. 1947, 40-4102(part); amd. Sec. 11, Ch. 798, L. 1991.**

Cross-References

Representations not warranties — standard application construction, 33-15-403.

33-22-503. Continuation of benefits to dependents. Any group disability policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

History: **En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973; amd. Sec. 3, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(6).**

33-22-504. Newborn infant coverage. (1) A group disability policy or certificate of insurance delivered or issued for delivery in this state may not be issued or amended in this state if it contains any disclaimer, waiver, preexisting condition exclusion, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons covered under the policy from and after the moment of birth.

(2) A policy or certificate subject to this section, must contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person covered under the policy.

(3) The coverage for newborn infants must be the same as provided by the policy for other covered persons. However, for newborn infants there may not be waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(4) This section does not apply to medicare supplement policies issued by reason of age.

(5) When a group disability policy or certificate issued under the policy provides for coverage or benefits for a resident of this state, the policy or certificate is considered delivered in this state within the meaning of this section regardless of whether the insurer issuing the policy or certificate is located in this state.

(6) The policy or certificate may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days.

History: **En. Secs. 385, 386, Ch. 286, L. 1959; amd. Secs. 3, 4, Ch. 74, L. 1973; amd. Secs. 3, 4, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(7), 40-4102(part); amd. Sec. 1, Ch. 384, L. 1987; amd. Sec. 62, Ch. 379, L. 1995; amd. Sec. 8, Ch. 416, L. 1997.**

Cross-References

Child support enforced by Department of Public Health and Human Services — insurance coverage required, 40-5-208.

33-22-505. Direct payment of hospital and medical services. Any group disability policy may on request by the group policyholder provide that all or any portion of any indemnities provided by any such policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

History: En. Sec. 387, Ch. 286, L. 1959; R.C.M. 1947, 40-4103.

33-22-506. Continuation of coverage for persons with disabilities — group contracts. (1) A group hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the policy or contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical disability and chiefly dependent upon the employee or member for support and maintenance. Proof of retardation or the disability and dependency must be furnished to the insurer or hospital or medical service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts.

History: (1)En. 40-3739 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3739, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3739, 40-3740; amd. Sec. 23, Ch. 472, L. 1997.

33-22-507. Continuing group coverage after reduction of work schedule. A person covered by a group disability insurance policy issued or renewed after October 1, 1981, under 33-22-501(1) may, for a period of 1 year, with the consent of the employer or the trustees, continue coverage under group disability policy during his employment notwithstanding any reduction of his regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged him shall be equal to that charged other members of the group of the same risk class.

History: En. Sec. 3, Ch. 579, L. 1981.

33-22-508. Conversion on termination of eligibility. (1) A group disability insurance policy or certificate of insurance delivered or issued for delivery or renewed after October 1, 1981, must contain a provision that if the insurance or any portion of it on a person or the person's dependents or family members covered under the policy ceases because of termination of the person's employment or of the person's membership in the class or classes eligible for coverage under the policy or as a result of a person's employer discontinuing the employer's business or as a result of a person's employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan and if the person had been insured for a period of 3 months and the person is not insured under another major medical disability insurance policy or plan, the person is entitled to have issued to the person by the insurer, without evidence of insurability, group coverage or an individual policy or, in the absence of an individual policy issued by the insurer, a group policy issued by the insurer, of hospital or medical service insurance on the person or the person's dependents or family members if application for the individual policy is made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity. In addition, the insurer shall make available a conversion policy as required by subsection (4).

(3) The premium on the individual policy or group policy must be at no more than 200% of the insurer's then customary rate applicable to the coverage of the individual or group policy. If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate. The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(4) The insurer shall also make available a conversion policy, certificate, or membership contract that provides at least the level of benefits provided by the insurer's lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under part 18, the insurer shall make available a conversion policy, certificate, or membership contract that provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan.

History: **En. Sec. 4, Ch. 579, L. 1981; amd. Sec. 2, Ch. 384, L. 1987; amd. Sec. 1, Ch. 200, L. 1991; amd. Sec. 9, Ch. 699, L. 1991; amd. Sec. 63, Ch. 379, L. 1995; amd. Sec. 11, Ch. 527, L. 1995; amd. Sec. 30, Ch. 531, L. 1997; amd. Sec. 1, Ch. 228, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 228 inserted second sentence in (3) prohibiting premium in excess of 150% of customary rate if person entitled to conversion has been insured for more than 3 years. Amendment effective October 1, 1999.

Applicability: Section 3, Ch. 228, L. 1999, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after January 1, 2000."

Cross-References

State employee plan — conversion requirement, 2-18-704.

33-22-509. Preexisting conditions. The converted policy may not exclude, as a preexisting condition, any conditions covered by the group contract, including pregnancy of the insured or the insured's spouse or dependents covered by the group contract at the time of conversion.

History: **En. Sec. 7, Ch. 579, L. 1981; amd. Sec. 3, Ch. 384, L. 1987.**

33-22-510. Insured's family — conversion entitlement. Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such death, or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of such continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group policy, including such children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to himself upon termination of his coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

History: **En. Sec. 8, Ch. 579, L. 1981.**

Cross-References
State employee plan — conversion requirement, 2-18-704.

33-22-511. Applicability. Notwithstanding any provision of Title 33 or other law to the contrary, it shall be lawful for an insurer and insured to agree to any terms in an insurance contract that provides more favorable terms for the benefit of the insured than authorized in Title 33 or other provisions of law.

History: En. Sec. 9, Ch. 579, L. 1981.

33-22-512. Coverage for well-child care. (1) Each group disability policy or certificate of insurance that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a group disability policy or certificate of insurance issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state.

History: En. Sec. 2, Ch. 199, L. 1991.

33-22-513. Limitation of eligibility on conversion. A person who purchases a policy of insurance under 33-22-508 ceases to be eligible for a conversion policy if the person insured by the policy:

(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395;

(2) fails to pay the premium on the policy purchased under 33-22-508;

(3) enrolls under another major medical disability insurance policy or plan, except that the person may maintain the conversion policy during any waiting period established under any new disability insurance policy or plan that the insured person purchases.

History: En. Sec. 3, Ch. 200, L. 1991.

33-22-514. Preexisting conditions relating to group market. (1) A group health plan or a health insurance issuer offering group health insurance coverage may not exclude coverage for a preexisting condition unless:

(a) medical advice, diagnosis, care, or treatment was recommended or received by the participant or beneficiary within the 6-month period ending on the enrollment date;

(b) exclusion of coverage extends for a period of not more than 12 months or 18 months in the case of a late enrollee; and

(c) the period of the preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.

(2) Genetic information may not be excluded as a preexisting condition in the absence of a diagnosis of the condition related to the genetic information.

(3) Pregnancy may not be excluded as a preexisting condition.

History: En. Sec. 39, Ch. 416, L. 1997; amd. Sec. 44, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1)(b) at end after "12 months" inserted "or 18 months in the case of a late enrollee". Amendment effective October 1, 1999.

Cross-References

Preexisting conditions relating to individual market, 33-22-246.

33-22-515 through 33-22-520 reserved.

33-22-521. Disclosure standards — group policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, a group disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time the application is made.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

(b) a general description of the insureds financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

(c) a statement of the maximum lifetime benefit available under the policy;

(d) a statement of the estimated periodic premium to be paid by the insured;

(e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant; and

(f) a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) If applicable, the outline of coverage must disclose that the policy does not contain coverage for mental illness or chemical dependency.

(4) The outline of coverage may include any other information that the insurer considers relevant to the applicants selection of an appropriate group disability policy.

(5) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

History: En. Sec. 6, Ch. 527, L. 1995.

33-22-522. Uniform health benefit plan — group. (1) Each insurer or health service corporation delivering or issuing for delivery in this state a health benefit plan, as defined in 33-22-243, to a group shall make available a uniform health benefit plan providing the benefits and services required in subsection (2).

(2) The uniform health benefit plan must:

(a) provide coverage for the services and articles required by 33-22-1521(2);

(b) pay 50% of the covered expenses in excess of an annual deductible that may not exceed $1,000 per person or $2,000 per family;

(c) include a limitation of $5,000 per person or $7,500 per family on the total annual out-of-pocket expenses for services covered; and

(d) be subject to a maximum lifetime benefit of $1 million.

(3) Except as provided in this section, a health insurance issuer may exclude any category of licensed health care practitioner and any benefit or coverage for health care services otherwise required by law or rule from a group uniform health benefit plan delivered or issued for delivery in this state.

History: En. Sec. 9, Ch. 527, L. 1995; amd. Sec. 2, Ch. 504, L. 1997.

33-22-523. Special enrollment periods. (1) A group health plan and a health insurance issuer offering group health insurance coverage in connection with a group health plan shall permit an employee or a dependent of an employee who is eligible, but not enrolled, for coverage under the terms of the group health plan to enroll for coverage under the terms of the group health plan if:

(a) the employee or dependent was covered under a group health plan or had health insurance coverage at the time that coverage was previously offered to the employee or dependent;

(b) the employee stated in writing at the time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or health insurance issuer required the statement at the time and provided the employee with notice of the requirement and the consequences of the requirement at the time;

(c) the employee's or dependent's coverage described in subsection (1)(a) was:

(i) under a COBRA continuation provision and was exhausted; or

(ii) not under a COBRA continuation provision and was terminated as a result of loss of eligibility for the coverage or because employer contributions toward the coverage were terminated; and

(d) under the terms of the group health plan, the employee requests the enrollment not later than 30 days after the date of exhaustion of coverage described in subsection (1)(c)(i) or termination of coverage or employer contribution described in subsection (1)(c)(ii).

(2) (a) A group health plan must provide for a dependent special enrollment period described in subsection (2)(b) during which a dependent may be enrolled under the group health plan as a dependent of the individual if the person becomes a dependent of the individual through marriage, birth, adoption, or placement for adoption. In the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage.

(b) A dependent special enrollment period under this subsection (2) is a period of not less than 30 days that begins on the later of:

(i) the date dependent coverage is made available; or

(ii) the date of the marriage, birth, adoption, or placement for adoption.

(3) If an individual seeks to enroll a dependent during the first 30 days of the dependent special enrollment period, the coverage of the dependent becomes effective:

(a) in the case of marriage, not later than the first day of the first month beginning after the date on which the completed request for enrollment is received;

(b) in the case of a dependent's birth, as of the date of birth; or

(c) in the case of a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption.

History: En. Sec. 35, Ch. 416, L. 1997; amd. Sec. 45, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (2) at end of first sentence after "individual" inserted "if the person becomes a dependent of the individual through marriage, birth, adoption, or placement for adoption"; and made minor changes in style. Amendment effective October 1, 1999.

33-22-524. Guaranteed renewability of coverage for employers in group market. (1) Except as provided in this section, if a health insurance issuer offers health insurance coverage in the small group market or large group market in connection with a group health plan, the health insurance issuer shall renew or continue the coverage in force at the option of the plan sponsor.

(2) A health insurance issuer may nonrenew or discontinue health insurance coverage offered in connection with a group health plan in the small group market or large group market if:

(a) the plan sponsor has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or if the health insurance issuer has not received timely premium payments;

(b) the plan sponsor has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of material fact under the terms of the coverage;

(c) the plan sponsor has failed to comply with a material plan provision relating to employer contribution or group health plan participation rules;

(d) the health insurance issuer is ceasing to offer coverage in that group market in accordance with this section and applicable state law;

(e) in the case of a health insurance issuer that offers health insurance coverage in the group market through a network plan, there is no longer any enrollee in connection with the group health plan who lives, resides, or works in the service area of the health insurance issuer and, in the case of the small group market, if the health insurance issuer would deny enrollment with respect to the plan under 33-22-1811(4)(a)(i); or

(f) in the case of health insurance coverage that is made available in the small group market or large group market only through one or more bona fide associations, the membership of an employer in the bona fide association ceases, but only if the coverage is terminated under this subsection (2)(f) uniformly without regard to any health status-related factor of a covered individual.

(3) A health insurance issuer may not discontinue offering a particular type of group health insurance coverage offered in the small group market or large group market unless in accordance with applicable state law and unless:

(a) the issuer provides notice to each plan sponsor, participant, and beneficiary provided coverage of this type in that group market of the discontinuation at least 90 days prior to the date of the discontinuation of the coverage;

(b) the issuer offers to each plan sponsor provided coverage of this type in the market the option to purchase any other health insurance coverage currently being offered by the health insurance issuer to a group health plan in the market; and

(c) the health insurance issuer acts uniformly without regard to the claims experience of those sponsors or any health status-related factor of any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for the coverage.

(4) (a) A health insurance issuer may not discontinue offering all health insurance coverage in the small group market, the large group market, or both the small group market and the large group market, unless in accordance with applicable state law and unless:

(i) the issuer provides notice of discontinuation to the commissioner and to each plan sponsor, participant, and beneficiary covered at least 180 days prior to the date of the discontinuation of coverage; and

(ii) all health insurance issued or delivered for issuance in Montana in the group market or markets is discontinued and coverage under the health insurance coverage in the group market or markets is not renewed.

(b) In the case of a discontinuation under this section in a group market, the health insurance issuer may not provide for the issuance of any health insurance coverage in the group market for a period of 5 years beginning on the date of the discontinuation of the last health insurance coverage not renewed.

(5) A health insurance issuer may modify upon renewal health insurance coverage for a product offered to a group health plan in the large group market or in the small group market if, for coverage that is available in the small group market other than only through one or more bona fide associations, modification is consistent with applicable state law and effective on a uniform basis among group health plans with that product.

(6) In the case of health insurance coverage that is made available by a health insurance issuer in the small group market or large group market to employers only through one or more bona fide associations, references to "plan sponsor" under this section include those employers.

History: En. Sec. 40, Ch. 416, L. 1997; amd. Sec. 46, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (2)(c) at end after "rules" deleted "in the case of the small group market or pursuant to applicable state law in the case of the large group market". Amendment effective October 1, 1999.

Cross-References

Guaranteed renewability of individual health insurance coverage, 33-22-247.

Guaranteed renewability in multiple employer welfare arrangements, 33-22-525.

33-22-525. Guaranteed renewability in multiple employer welfare arrangements. A group health plan that is a multiple employer welfare arrangement, as defined by 29 U.S.C. 1002, may not deny an employer whose employees are covered under the group health plan continued access to the same or different coverage under the terms of the group health plan other than:

(1) for nonpayment of contributions;

(2) for fraud or other intentional misrepresentation of material fact by the employer;

(3) for noncompliance with material plan provisions;

(4) because the group health plan is ceasing to offer any coverage in a geographic area;

(5) in the case of a group health plan that offers benefits through a network plan, because there is no longer any individual enrolled through the employer who lives, resides, or works in the service area of the network plan and the group health plan applies to this section uniformly without regard to the claims experience of employers or any health status-related factor of those individuals or their dependents; or

(6) for failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the group health plan, or to employ employees covered by the agreement.

History: En. Sec. 42, Ch. 416, L. 1997.

Cross-References

Guaranteed renewability of individual health insurance coverage, 33-22-247.

Guaranteed renewability of coverage for employers in group market, 33-22-524.

Multiple employer welfare arrangements, Title 33, ch. 35.

33-22-526. Group health discrimination prohibited. (1) (a) A group health plan or a health insurance issuer offering group health insurance coverage may not establish rules for eligibility, including continued eligibility, of any individual to enroll under the terms of the group health plan based on any of the following health status-related factors of the individual or a dependent of the individual:

(i) health status;

(ii) medical condition, including both physical and mental illnesses;

(iii) claims experience;

(iv) receipt of health care;

(v) medical history;

(vi) genetic information;

(vii) evidence of insurability, including conditions arising out of acts of domestic violence; or

(viii) disability.

(b) This subsection does not:

(i) require a group health plan or group health insurance coverage to provide particular benefits other than those provided under the terms of the group health plan or group health insurance coverage; or

(ii) prevent the group health plan or group health insurance coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the group health plan or group health insurance coverage.

(c) For purposes of subsection (1)(a), rules for eligibility to enroll under a group health plan include rules defining an applicable waiting period for the enrollment.

(2) (a) A group health plan and a health insurance issuer offering health insurance coverage in connection with a group health plan may not require an individual, as a condition of enrollment or continued enrollment under the group health plan, to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the group health plan on the basis of any health status-related factor of the individual or of an individual enrolled under the plan as a dependent of the individual.

(b) This subsection (2) does not:

(i) restrict the amount that an employer may be charged for coverage under a group health plan; or

(ii) prevent a group health plan and a health insurance issuer offering group health insurance coverage from establishing premium discounts or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

History: En. Sec. 44, Ch. 416, L. 1997.

Cross-References

Illegal discrimination, Title 49, ch. 2.

Part 6

Blanket Disability Insurance

33-22-601. Blanket disability insurance defined. Blanket disability insurance is hereby declared to be that form of disability insurance covering groups of persons as enumerated in one of the following subsections:

(1) under a policy or contract issued to any common carrier or to any operator, owner, or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group defined as all persons or all persons of a class who may become passengers on such common carrier or such means of transportation;

(2) under a policy or contract issued to an employer, who shall be deemed the policyholder, covering all employees, dependents, or guests, defined by reference to specified hazards incident to the activities or operations of the employer or any class of employees, dependents, or guests similarly defined;

(3) under a policy or contract issued to a school or other institution of learning, camp or sponsor thereof; or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or campers. Supervisors and employees may be included.

(4) under a policy or contract issued in the name of any religious, charitable, recreational, educational, or civic organization, which shall be deemed the policyholder, covering participants in activities sponsored by the organization;

(5) under a policy or contract issued to a sports team or sponsors thereof, which shall be deemed the policyholder, covering members, officials, and supervisors;

(6) under a policy or contract issued in the name of any volunteer fire department, first aid, or other such volunteer group, or agency having jurisdiction thereof, which shall be deemed the policyholder, covering all of the members of such fire department or group;

(7) under a policy or contract issued to cover any other risk or class of risks which in the discretion of the commissioner may be properly eligible for blanket disability insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

History: En. Sec. 388, Ch. 286, L. 1959; R.C.M. 1947, 40-4104.

Cross-References

Volunteer fire departments, Title 7, ch. 33, part 23.

33-22-602. Required provisions of blanket policies. Any insurer authorized to write disability insurance in this state shall have the power to issue blanket disability insurance. No such blanket policy may be issued or delivered in this state unless a copy of the form thereof shall have been filed in accordance with 33-1-501. Every such blanket policy shall contain provisions which in the opinion of the commissioner are at least as favorable to the policyholder and the individual insured as the following, a provision that:

(1) the policy and the application shall constitute the entire contract between the parties and that all statements made by the policyholder shall, in absence of fraud, be deemed representations and not warranties and that no such statements shall be used in defense to a claim under the policy, unless it is contained in a written application;

(2) written notice of sickness or of injury must be given to the insurer within 20 days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(3) the insurer will furnish to the policyholder such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of 15 days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(4) in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within 30 days after the commencement of the period for which the insurer is liable and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within 90 days after the date of such loss. Failure to furnish such proof within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to

furnish such proof and that such proof was furnished as soon as was reasonably possible.

(5) all benefits payable under the policy other than benefits for loss of time will be payable immediately upon receipt of due written proof of such loss and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not later than at the expiration of each period of 30 days during the continuance of the period for which the insurer is liable and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof;

(6) the insurer at its own expense shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law;

(7) no action at law or in equity shall be brought to recover under the policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of 3 years after the time written proof of loss is required to be furnished.

History: En. Sec. 389, Ch. 286, L. 1959; R.C.M. 1947, 40-4105.

Cross-References

Standard application provision — warranties not representations, 33-15-403.

Requirement for redundant proofs of loss for delay — unfair trade practice, 33-18-201.

Failure to promptly pay — unfair trade practice, 33-18-201.

Limitations on performing autopsies, 50-21-103.

33-22-603. Application and certificates not required. An individual application shall not be required from a person covered under a blanket disability policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

History: En. Sec. 390, Ch. 286, L. 1959; R.C.M. 1947, 40-4106.

33-22-604. Payment of claims — discharge. (1) All benefits under any blanket disability policy shall be payable to the person insured or to his designated beneficiary or beneficiaries or to his estate; except that if the person insured be a minor or mental incompetent, such benefits may be made payable to his parent, guardian, or other person actually supporting him; or if the entire cost of the insurance has been borne by the employer such benefits may be made payable to the employer. Provided, however, that the policy may provide that all or any portion of any indemnities provided by such policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person.

(2) Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

History: En. Sec. 391, Ch. 286, L. 1959; R.C.M. 1947, 40-4107.

Part 7

Coverage for Mental Illness, Alcoholism, and Drug Addiction

Part Cross-References

Mentally ill, Title 53, ch. 21.

Alcoholism and drug dependence, Title 53, ch. 24.

33-22-701. Scope of part — purpose — exception. Except as provided in 33-22-706, the provisions of this part apply to all group policies of accident and health insurance and group subscriber contracts for the care and treatment of mental illness, alcoholism, and drug addiction offered to Montana residents by insurers, health service corporations, and all employees' health and welfare funds that provide accident and health insurance benefits to residents of this state. It is the purpose of this part to preserve the rights of the consumer to have this coverage according to the consumer's medical and economic needs.

History: En. Sec. 1, Ch. 197, L. 1979; amd. Sec. 1, Ch. 535, L. 1981; amd. Sec. 1, Ch. 593, L. 1983; amd. Sec. 4, Ch. 384, L. 1987; amd. Sec. 2, Ch. 348, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 348 at beginning inserted exception clause; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 9, Ch. 348, L. 1999, provided: "[This act] is effective January 1, 2000, for all policies or certificates issued or renewed on or after that date."

Cross-References

Licensing of hospitals and related facilities, Title 50, ch. 5, part 2.

Facility standards, 53-24-208.

33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Chemical dependency treatment center" means a treatment facility that:

(a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state; and

(b) is licensed or approved as a treatment center by the department of public health and human services under 53-24-208.

(2) "Inpatient benefits" are as set forth in 33-22-705.

(3) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and a treatment facility that is:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(4) (a) "Mental illness" means a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and that is associated with:

(i) present distress or a painful symptom;

(ii) a disability or impairment in one or more areas of functioning; or

(iii) a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

(b) Mental illness must be considered as a manifestation of a behavioral, psychological, or biological dysfunction in a person.

(c) Mental illness does not include:

(i) a developmental disorder;

(ii) a speech disorder;

(iii) a psychoactive substance use disorder;

(iv) an eating disorder, except for bulimia and anorexia nervosa;

(v) an impulse control disorder, except for intermittent explosive disorder and trichotillomania; or

(vi) a severe mental illness as provided in 33-22-706.

(5) "Outpatient benefits" are as set forth in 33-22-705.

History: En. Sec. 2, Ch. 197, L. 1979; amd. Sec. 2, Ch. 535, L. 1981; amd. Sec. 2, Ch. 593, L. 1983; amd. Sec. 2, Ch. 302, L. 1985; amd. Sec. 2, Ch. 98, L. 1987; amd. Sec. 2, Ch.

606, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 448, L. 1995; amd. Sec. 83, Ch. 546, L. 1995; amd. Sec. 3, Ch. 348, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 348 inserted (4)(c)(vi) regarding severe mental illness; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 9, Ch. 348, L. 1999, provided: "[This act] is effective January 1, 2000, for all policies or certificates issued or renewed on or after that date."

Cross-References

Disclaimer provision allowable — disability insurance, 33-22-231.

Medicine — licensure, Title 37, ch. 3.

Licensure of psychologists, Title 37, ch. 17.

Licensure of social workers, Title 37, ch. 22.

Certification of chemical dependency counselors, Title 37, ch. 35.

33-22-703. *(Temporary)* **Coverage for mental illness, alcoholism, and drug addiction.** (1) A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(a) under basic inpatient expense policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(i) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(ii) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(iii) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000; and

(iv) costs for medical detoxification treatment must be paid the same as any other sickness or illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(a)(iii);

(b) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(i) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(ii) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(iii) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, may be subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000;

(iv) costs for medical detoxification treatment, which must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (1)(b)(iii) and;

(v) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000, but this subsection (1)(b)(v) does not apply to benefits for services furnished before September 30, 2001, unless the group health plan or group health insurance coverage is exempt from the requirements of subsection (2) pursuant to subsection (3) or (4).

(2) A group health plan or group health insurance coverage offered in connection with a group health plan may not impose an aggregate dollar limit on an annual or lifetime basis more restrictively for mental health benefits than for medical and surgical benefits covered by the plans. In the case of a plan that has different aggregate lifetime limits and different annual limits on various categories of medical and surgical benefits, the commissioner shall establish rules for determining a weighted average aggregate lifetime limit and weighted average annual limit to apply to mental health benefits. This subsection does not apply to benefits for services furnished on or after September 30, 2001.

(3) Subsection (2) does not apply to a group health plan or health insurance coverage offered in connection with a group health plan in the small group market.

(4) Subsection (2) does not apply to a group health plan or health insurance coverage offered in connection with a group health plan if the application of subsection (2) results in an increase in the cost under the group health plan or for coverage of at least 1%. This subsection applies separately to each benefit package option in the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the group health plan. *(Terminates September 30, 2001—sec. 54, Ch. 416, L. 1997.)*

33-22-703. *(Effective October 1, 2001)* **Coverage for mental illness, alcoholism, and drug addiction.** A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000 and;

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(c);

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness, alcoholism, and drug addiction is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, may be subject to a maximum benefit of $6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000;

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (2)(c) and;

(e) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000, but this subsection (2)(e) does not apply to benefits for services furnished before September 30, 2001.

History: En. Sec. 3, Ch. 197, L. 1979; amd. Sec. 3, Ch. 535, L. 1981; amd. Sec. 3, Ch. 593, L. 1983; amd. Sec. 5, Ch. 139, L. 1987; amd. Sec. 5, Ch. 384, L. 1987; amd. Sec. 2, Ch. 448, L. 1995; amd. Sec. 150, Ch. 42, L. 1997; amd. Sec. 9, Ch. 416, L. 1997; amd. Sec. 1, Ch. 477, L. 1999.

Compiler's Comments

1999 Amendment: (Temporary version) Chapter 477 in (1)(a) after "hospital benefits" inserted "and outpatient benefits"; in (1)(a)(i) after "illness" deleted "alcoholism, and drug addiction"; in (1)(a)(iii) at beginning after "inpatient" inserted "and outpatient", after "addiction" inserted "excluding costs for medical detoxification", and after "benefit of" substituted "$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000" for "$4,000 in any 24-month period and a maximum lifetime benefit of $8,000"; inserted (1)(a)(iv) regarding costs for medical detoxification treatment; in (1)(b)(i) after "illness" deleted "alcoholism, and drug addiction"; in (1)(b)(iii) at beginning after "inpatient" inserted "and outpatient", after "addiction" inserted "excluding costs for medical detoxification", and after "benefit of" substituted "$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000" for "$4,000 in any 24-month period and a maximum lifetime benefit of $8,000"; inserted (1)(b)(iv) regarding costs for medical detoxification treatment; deleted former (1)(b)(v) that read: "(v) outpatient treatment for alcoholism and drug addiction is subject to a maximum yearly benefit of $1,000"; and made minor changes in style. Amendment effective January 1, 2000.

(Version effective October 1, 2001) In (1) after "hospital benefits" inserted "and outpatient benefits"; in (1)(a) after "illness" deleted "alcoholism, and drug addiction"; in (1)(c) at beginning after "inpatient" inserted "and outpatient", after "addiction" inserted "excluding costs for medical detoxification", and after "benefit of" substituted "$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000" for "$4,000 in any 24-month period and a maximum lifetime benefit of $8,000"; inserted (1)(d) regarding costs for medical detoxification treatment; in (2)(c) at beginning after "inpatient" inserted "and outpatient", after "addiction" inserted "excluding costs for medical detoxification", and after "benefit of" substituted "$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000" for "$4,000 in any 24-month period and a maximum lifetime benefit of $8,000"; inserted (2)(d) regarding costs for medical detoxification treatment; deleted former (2)(e) that read: "(e) outpatient treatment for alcoholism and drug addiction is subject to a maximum yearly benefit of $1,000"; and made minor changes in style.

Effective Date — Applicability: Section 3, Ch. 477, L. 1999, provided: "[This act] is effective January 1, 2000, and applies to all policies or certificates issued or renewed on or after that date."

33-22-704. Applicability. Except as provided in 33-22-706, this part applies to policies, contracts, or any employees' health and welfare fund that provides accident and health insurance benefits, established, delivered, issued for delivery, or renewed after September 30, 1987, but does not apply to blanket, short-term travel, accident-only, limited or specified disease, individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans.

History: En. Sec. 4, Ch. 197, L. 1979; amd. Sec. 4, Ch. 535, L. 1981; amd. Sec. 4, Ch. 593, L. 1983; amd. Sec. 6, Ch. 384, L. 1987; amd. Sec. 4, Ch. 348, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 348 at beginning inserted exception clause. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 9, Ch. 348, L. 1999, provided: "[This act] is effective January 1, 2000, for all policies or certificates issued or renewed on or after that date."

33-22-705. Inpatient and outpatient benefits. (1) "Inpatient benefits" are benefits payable for charges made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and treatment of alcoholism or drug addiction in a freestanding inpatient facility must be in a chemical dependency treatment center that is approved by the department of public health and human services under 53-24-208. Inpatient benefits include payment for medically monitored and medically managed intensive inpatient services and clinically managed high-intensity residential services.

(2) "Outpatient benefits" are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or chemical dependency treatment center for the necessary care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center must be approved by the department of public health and human services under 53-24-208.

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or chemical dependency counselor certified by the department of commerce under Title 37, chapter 35.

History: En. Sec. 1, Ch. 98, L. 1987; amd. Sec. 12, Ch. 606, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 84, Ch. 546, L. 1995; amd. Sec. 11, Ch. 507, L. 1997; amd. Sec. 2, Ch. 477, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 477 in (1) inserted third sentence providing that inpatient benefits include payment for medically monitored and medically managed intensive inpatient services and clinically managed high-intensity residential services. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 3, Ch. 477, L. 1999, provided: "[This act] is effective January 1, 2000, and applies to all policies or certificates issued or renewed on or after that date."

33-22-706. *(Effective January 1, 2000)* **Coverage for severe mental illness — definition.** (1) A policy or certificate of health insurance or disability insurance that is delivered, issued for delivery, renewed, extended, or modified in this state must provide a level of benefits for the necessary care and treatment of severe mental illness, as defined in subsection (6), that is no less favorable than that level provided for other physical illness generally. Benefits for treatment of severe mental illness may be subject to managed care provisions contained in the policy or certificate.

(2) Benefits provided pursuant to subsection (1) include but are not limited to:

(a) inpatient hospital services;

(b) outpatient services;

(c) rehabilitative services;
(d) medication;
(e) services rendered by a licensed physician, licensed advanced practice registered nurse with a specialty in mental health, licensed social worker, licensed psychologist, or licensed professional counselor when those services are part of a treatment plan recommended and authorized by a licensed physician; and
(f) services rendered by a licensed advanced practice registered nurse with prescriptive authority and specializing in mental health.

(3) Benefits provided pursuant to this section must be included when determining maximum lifetime benefits, copayments, and deductibles.

(4) (a) This section applies to health service benefits provided by:
(i) individual and group health and disability insurance;
(ii) individual and group hospital or medical expense insurance;
(iii) medical subscriber contracts;
(iv) membership contracts of a health service corporation; and
(v) health maintenance organizations.
(b) This section does not apply to the following coverages:
(i) blanket;
(ii) short-term travel;
(iii) accident only;
(iv) limited or specific disease;
(v) Title XVIII of the Social Security Act (medicare); or
(vi) any other similar coverage under state or federal government plans.

(5) This section does not limit benefits for an illness or condition that does not constitute a severe mental illness, as defined in subsection (6), but that does constitute a mental illness, as defined in 33-22-702.

(6) As used in this section, "severe mental illness" means the following disorders as defined by the American psychiatric association:
(a) schizophrenia;
(b) schizoaffective disorder;
(c) bipolar disorder;
(d) major depression;
(e) panic disorder;
(f) obsessive-compulsive disorder; and
(g) autism.

History: **En. Sec. 1, Ch. 348, L. 1999.**

Compiler's Comments

Effective Date — Applicability: Section 9, Ch. 348, L. 1999, provided: "[This act] is effective January 1, 2000, for all policies or certificates issued or renewed on or after that date."

Part 8

Extended Health Insurance (Repealed)

33-22-801. Repealed. Sec. 69, Ch. 472, L. 1999.

History: **En. Sec. 1, Ch. 61, L. 1965; R.C.M. 1947, 40-5401.**

33-22-802. Repealed. Sec. 69, Ch. 472, L. 1999.

History: **En. Sec. 2, Ch. 61, L. 1965; R.C.M. 1947, 40-5402.**

33-22-803. Repealed. Sec. 69, Ch. 472, L. 1999.

History: **En. Sec. 3, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part).**

33-22-804. Repealed. Sec. 69, Ch. 472, L. 1999.

History: **En. Sec. 5, Ch. 61, L. 1965; R.C.M. 1947, 40-5405; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 68, Ch. 596, L. 1993.**

33-22-805. Repealed. Sec. 69, Ch. 472, L. 1999.

History: En. Sec. 7, Ch. 61, L. 1965; R.C.M. 1947, 40-5407(part); amd. Sec. 1, Ch. 713, L. 1989.

33-22-806. Repealed. Sec. 69, Ch. 472, L. 1999.

History: En. Sec. 8, Ch. 61, L. 1965; R.C.M. 1947, 40-5408.

33-22-807 through 33-22-810 reserved.

33-22-811. Repealed. Sec. 69, Ch. 472, L. 1999.

History: En. Sec. 3, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part).

33-22-812. Repealed. Sec. 69, Ch. 472, L. 1999.

History: En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part); amd. Sec. 24, Ch. 303, L. 1981.

33-22-813. Repealed. Sec. 69, Ch. 472, L. 1999.

History: En. Secs. 3, 4, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part), 40-5404; amd. Sec. 13, Ch. 345, L. 1979; amd. Sec. 1, Ch. 713, L. 1989.

33-22-814. Repealed. Sec. 69, Ch. 472, L. 1999.

History: En. Sec. 7, Ch. 61, L. 1965; R.C.M. 1947, 40-5407(part).

33-22-815. Repealed. Sec. 69, Ch. 472, L. 1999.

History: En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part).

33-22-816. Repealed. Sec. 69, Ch. 472, L. 1999.

History: En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part).

Part 9

Medicare Supplement Insurance Minimum Standards

33-22-901. Short title. This part may be cited as the "Medicare Supplement Insurance Minimum Standards Act".

History: En. Sec. 1, Ch. 298, L. 1981.

33-22-902. Purpose. The purpose of this part is to establish minimum standards for medicare supplement policies and certificates and to establish a regulatory program that meets the requirements of 42 U.S.C. 1395ss(p)(1)(A).

History: En. Sec. 2, Ch. 298, L. 1981; amd. Sec. 1, Ch. 163, L. 1993.

33-22-903. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) in the case of a group medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means a certificate delivered or issued for delivery in this state under a group medicare supplement policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(4) "Entity" means an insurer as defined in 33-1-201, a health service corporation as defined in 33-30-101, and a health maintenance organization as defined in 33-31-102.

(5) "Health care expenses":

(a) means expenses of a health maintenance organization associated with the delivery of health care services that are analogous to incurred losses of an insurer;

(b) does not include home office and overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, or claims processing costs.

(6) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any entity delivering or issuing for delivery in this state medicare supplement policies or certificates.

(7) "Medicare" means Health Insurance for the Aged, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(8) "Medicare supplement policy" means a group or individual policy of disability insurance or a subscriber contract of a health service corporation, other than a policy issued pursuant to a contract under 42 U.S.C. 1395ss(g)(1), or a policy issued under a demonstration project authorized pursuant to amendments to the federal Social Security Act, that is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. The term does not include:

(a) a policy or contract of one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or a combination of employers, organizations, and trustees, for employees or former employees, or a combination of current and former employees, or for members or former members, or a combination of current and former members, of the labor organizations; or

(b) individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions that are inconsistent with the requirements of this part or policies issued to employees or members as additions to franchise plans in existence on April 8, 1981.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

History: En. Sec. 3, Ch. 298, L. 1981; amd. Sec. 2, Ch. 682, L. 1989; amd. Sec. 2, Ch. 163, L. 1993; amd. Sec. 31, Ch. 531, L. 1997.

33-22-904. Standards for policy provisions — rules. (1) A medicare supplement policy or certificate in force in this state may not contain benefits that duplicate benefits provided by medicare.

(2) The commissioner shall adopt reasonable rules to establish specific standards for policy provisions of medicare supplement policies and certificates. A requirement of this code relating to minimum required policy benefits, other than the minimum standards contained in this part, may not apply to medicare supplement policies and certificates. The standards are in addition to and in accordance with applicable laws of this state, including the provisions of Title 33, chapter 22, and may cover but are not limited to:

(a) terms of renewability;
(b) initial and subsequent conditions of eligibility;
(c) nonduplication of coverage;
(d) probationary periods;
(e) benefit limitations, exceptions, and reductions;
(f) elimination periods;
(g) requirements for replacement;
(h) recurrent conditions; and
(i) definitions of terms.

(3) The commissioner may adopt reasonable rules that prohibit policy or certificate provisions not otherwise specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any

person insured or proposed for coverage under a medicare supplement policy or certificate.

(4) Notwithstanding any other provisions of the law, a medicare supplement policy or certificate may not exclude or limit benefits for losses incurred more than 6 months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

(5) The commissioner may adopt rules necessary to conform medicare supplement policies and certificates to the requirements of federal law and federal regulations, including but not limited to rules:

(a) requiring refunds or credits if the policies or certificates do not meet loss requirements;

(b) establishing a uniform methodology for calculating and reporting loss ratios;

(c) ensuring public access to policies, premiums, and loss ratio information of issuers of medicare supplement insurance;

(d) establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases; and

(e) establishing a policy for holding public hearings prior to approval of premium increases.

History: En. Sec. 4, Ch. 298, L. 1981; amd. Sec. 3, Ch. 682, L. 1989; amd. Sec. 3, Ch. 163, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-22-905. Minimum standards for benefits and payment of claims — rules. The commissioner shall adopt reasonable rules to establish minimum standards for benefits, payment of claims, marketing practices, compensation arrangements, and reporting practices for medicare supplement policies and certificates.

History: En. Sec. 5, Ch. 298, L. 1981; amd. Sec. 4, Ch. 682, L. 1989; amd. Sec. 4, Ch. 163, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-22-906. Loss ratio standards and filing requirements — limits on compensation. (1) Medicare supplement policies and certificates must return to policyholders or certificate holders benefits that are reasonable in relation to the premium charged. The commissioner shall adopt reasonable rules to establish minimum standards for loss ratios of medicare supplement policies and certificates on the basis of incurred claims experience or incurred health care expenses, where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules adopted pursuant to this section, medicare supplement policies and certificates issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, must be treated as group policies. Every entity providing medicare supplement insurance benefits to a resident of this state shall make premium adjustments:

(a) necessary to produce an expected loss ratio under the policy or certificate that meets the minimum loss ratio standards for medicare supplement policies and certificates as established by rule; and

(b) expected to result in a loss ratio at least as great as that originally anticipated by the entity when it established current premiums for the medicare supplement policy or certificate.

(2) The commissioner shall by rule establish the timing and manner of the premium adjustments. Every entity providing medicare supplement policies or certificates in this state shall annually file with the commissioner its rates, rating schedule, and supporting documentation demonstrating that it is in compliance with the applicable loss ratio standards of this part. An entity transacting medicare supplement insurance in this state may not adjust its rates more than twice a year and may not adjust its rates for the first year a policy is in force, except to allow for changes in federal laws or regulations relating to medicare. Each filing of rates and rating schedules must demonstrate that the actual and expected losses in relation to premiums complies with the requirements of this part.

(3) An entity may not provide compensation to its insurance producers that is greater than the renewal compensation that would be paid on an existing policy or certificate if:

(a) the existing policy or certificate were replaced by another policy or certificate with the same insurer and the new benefits are substantially similar to the benefits under the old policy or certificate; and

(b) the old policy or certificate was issued by the same insurer or insurance group.

History: En. Sec. 6, Ch. 298, L. 1981; amd. Sec. 5, Ch. 682, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 5, Ch. 163, L. 1993.

33-22-907. Disclosure standards — informational brochure — rules. (1) In order to provide for full and fair disclosure in the sale of medicare supplement policies and certificates, a medicare supplement policy may not be delivered or issued for delivery in this state and a certificate may not be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time that application is made. The outline of coverage must be filed with the commissioner as required by 33-1-501. The filing must be made at least 60 days in advance of the date that the outline of coverage is delivered to any resident of this state.

(2) (a) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1).

(b) For purposes of this section, “format” means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions.

(c) The outline of coverage must include:

(i) a description of the principal benefits and coverage provided in the policy or certificate;

(ii) a statement of the exceptions, reductions, and limitations contained in the policy or certificate;

(iii) a statement of the renewal provisions, including any reservation by the issuer of a right to change premiums and disclosure of the existence of any automatic renewal premium increases based on the policyholder’s or certificate holder’s age;

(iv) a statement that the outline of coverage is a summary of the policy or certificate issued or applied for and that the policy or certificate should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and to improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare at the same time that the outline of coverage is delivered. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request, but not later than the time of policy delivery, to any prospective insureds eligible for medicare.

(4) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for medicare, other than:

(a) medicare supplement policies or certificates; or

(b) disability income policies.

(5) The commissioner may further adopt reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies or certificates by persons eligible for medicare.

(6) As soon as practicable, but no later than 30 days before the annual effective date of a medicare benefit change, every entity providing medicare supplement insurance or benefits to a resident of this state shall notify its policyholders and certificate holders, in a format that the commissioner prescribes by rule, of the changes that it has made to the medicare supplement policy or certificate.

History: En. Sec. 7, Ch. 298, L. 1981; amd. Sec. 6, Ch. 682, L. 1989; amd. Sec. 6, Ch. 163, L. 1993; amd. Sec. 32, Ch. 531, L. 1997.

33-22-908. Notice of free examination. Medicare supplement policies and certificates must have a notice prominently printed on the first page of the policy or certificate or attached to the policy or certificate stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. The issuer shall pay any refund made pursuant to this section directly to the applicant in a timely manner.

History: En. Sec. 8, Ch. 298, L. 1981; amd. Sec. 7, Ch. 682, L. 1989; amd. Sec. 7, Ch. 163, L. 1993.

33-22-909. Administrative procedures. Rules adopted pursuant to this part are subject to the provisions of 33-1-313 and Title 2, chapter 4.

History: En. Sec. 9, Ch. 298, L. 1981.

33-22-910. Filing requirements for advertising. Every issuer of medicare supplement policies or certificates in this state shall provide to the commissioner for the commissioner's approval a copy of any medicare supplement advertising intended for use in this state, whether through written, radio, or television medium.

History: En. Sec. 8, Ch. 682, L. 1989; amd. Sec. 8, Ch. 163, L. 1993; amd. Sec. 33, Ch. 531, L. 1997.

33-22-911. Penalties. In addition to any other penalties for violations of the insurance code, the commissioner may after hearing require issuers violating any provision of or rule adopted under Title 33, chapter 16, or this part to cease marketing a medicare supplement policy or certificate in this state that is related directly or indirectly to the violation or take action that is necessary to comply with the provisions of Title 33, chapter 16, or this part or the rules adopted under Title 33, chapter 16, or this part, or both.

History: En. Sec. 9, Ch. 682, L. 1989; amd. Sec. 9, Ch. 163, L. 1993.

33-22-912 through 33-22-920 reserved.

33-22-921. Discontinuance or nonrenewal — alternate policy or certificate — same insurer. (1) If a disability insurer discontinues or does not renew a medicare supplement policy product or certificate and offers an alternate medicare supplement policy or certificate to its insureds within this state, it may not deny benefits under the replacing policy or certificate to an insured who receives treatment for a condition that was a covered expense under the replaced policy or certificate and is a covered expense under the replacing policy or certificate if the insured enrolls in and pays the premium for the replacing policy or certificate within 31 days after the termination of the replaced policy or certificate.

(2) A disability insurer who discontinues or does not renew a medicare supplement policy product or certificate and offers an alternate medicare supplement policy or certificate shall base its premium for the alternate policy or certificate on the rates currently in place for that policy or certificate.

(3) If the insured has not satisfied the preexisting condition limitation under the replaced medicare supplement policy or certificate, any period of time that was covered by that policy or certificate must be credited toward the preexisting condition limitation period of the replacing policy or certificate.

History: En. Sec. 1, Ch. 125, L. 1987; amd. Sec. 12, Ch. 798, L. 1991.

33-22-922. Discontinuance or nonrenewal — alternate policy — unauthorized bulk reinsurance. (1) Alternate medicare supplement coverage as provided in 33-22-921 must be offered to its insureds by a disability insurer that:

(a) bulk cedes its medicare supplement policy business to an insurer that does not meet the requirements of chapter 2;

(b) authorizes the bulk reinsurer to administer the medicare supplement policies on its behalf; and

(c) discontinues or does not renew a medicare supplement policy product.

(2) The premium for the alternate policy referred to in subsection (1) must be based on actuarially justified rates.

History: En. Sec. 2, Ch. 125, L. 1987.

33-22-923. Replacement policy or certificate — different insurer. (1) If a disability insurer replaces a medicare supplement policy or certificate, it may not deny benefits under the replacing policy or certificate to an insured who receives treatment for a condition that was a covered expense under the replaced policy or certificate and is a covered expense under the replacing policy or certificate if the insured pays the premium for the replacing policy or certificate when due or within 31 days after the termination of the replaced policy or certificate.

(2) An insurer who replaces a medicare supplement policy or certificate shall base its premium for the replacement policy or certificate on the rates currently in place for that policy or certificate.

(3) If the insured has not satisfied the preexisting condition limitation under the replaced medicare supplement policy or certificate, any period of time that was covered by that policy or certificate must be credited toward the preexisting condition limitation period of the replacing policy or certificate.

(4) To receive the benefits of subsections (1) through (3), a person shall submit to the replacing insurer proof of prior coverage, evidence of benefits provided under the previous policy or certificate, and the effective date and the date of termination of coverage under the previous policy or certificate.

History: En. Sec. 3, Ch. 125, L. 1987; amd. Sec. 13, Ch. 798, L. 1991.

33-22-924. Renewal requirement. (1) If a person pays a renewal premium on the date it is due or within 31 days after it is due, an insurer may not refuse to renew a medicare supplement policy or certificate unless the insurer:

(a) refuses to renew all policies or certificates in this state that are of the same form and issued to persons of the same class; and

(b) offers a replacement policy or certificate at actuarially justified rates.

(2) If an insurer refuses to renew all policies or certificates in this state that are of the same form and issued to persons of the same class, the policies or certificates will remain in force during the grace period stated in the replaced policy or certificate. An insurer's refusal to renew a policy or certificate may not affect a claim that arose under the discontinued policy or certificate during the period in which an insured was confined without interruption to a medical care facility for treatment.

History: En. Sec. 4, Ch. 125, L. 1987; amd. Sec. 14, Ch. 798, L. 1991.

Part 10

Home Health Care Coverage

33-22-1001. Definition of home health care. "Home health care" means services provided by a licensed home health agency to an insured in his place of residence that is prescribed by the insured's attending physician as part of a written plan of care. Services provided by home health care include:

(1) nursing;
(2) home health aide services;
(3) physical therapy;
(4) occupational therapy;
(5) speech therapy;
(6) hospice service;
(7) medical supplies and equipment suitable for use in the home; and
(8) medically necessary personal hygiene, grooming, and dietary assistance.

History: En. Sec. 1, Ch. 508, L. 1981.

Cross-References

Hospitals and related facilities — general provisions, Title 50, ch. 5, part 1.

33-22-1002. Availability of coverage for home health care. Insurers and health services corporations transacting health insurance business in this state must make available, under group insurance policies and under group hospital and medical service plan contracts, benefits for home health care. Applicants for a group policy or contract may select any level of benefits as may be offered by the insurer or service plan corporation.

History: En. Sec. 2, Ch. 508, L. 1981.

33-22-1003. Applicability. This part applies to policies or contracts delivered or issued for delivery in this state after January 29, 1981, but does not apply to blanket, short-term travel, accident-only, limited or specified disease, or individual conversion policies or contracts, or to policies or contracts designed for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under federal governmental plans.

History: En. Sec. 3, Ch. 508, L. 1981.

Part 11

Long-Term Care Insurance Act

33-22-1101. Short title. This part may be cited as the "Long-Term Care Insurance Act".

History: En. Sec. 1, Ch. 355, L. 1989.

33-22-1102. Purpose. The purpose of this part is to:

(1) promote the public interest;

(2) promote the availability of long-term care insurance;

(3) protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices;

(4) establish standards for long-term care insurance;

(5) facilitate public understanding and comparison of long-term care insurance policies; and

(6) facilitate flexibility and innovation in the development of long-term care insurance coverage.

History: **En. Sec. 2, Ch. 355, L. 1989.**

33-22-1103. Compliance required. A policy may not be advertised, marketed, or offered in this state as long-term care insurance or nursing home insurance unless it complies with this part.

History: **En. Sec. 13, Ch. 355, L. 1989.**

33-22-1104 through 33-22-1106 reserved.

33-22-1107. Definitions. As used in this part, the following definitions apply:

(1) "Activities of daily living" means:

(a) eating;

(b) toileting;

(c) transferring;

(d) bathing;

(e) dressing; and

(f) continence.

(2) "Applicant" means:

(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(b) in the case of a group long-term care insurance policy, the proposed certificate holder.

(3) "Appropriate sale criteria" means the set of conditions that an insurance company is required to address with an applicant that help to determine whether or not a particular insurance policy or contract offered for sale is appropriate to the applicant. These conditions must include but are not limited to any insurance premium involved in the policy, the income of the applicant, and the savings and investments of the applicant.

(4) "Certificate" means a certificate issued under a group long-term care insurance policy that has been delivered or issued for delivery in this state.

(5) "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state and issued to:

(a) (i) an employer;

(ii) a labor organization;

(iii) a trust established by an employer or labor organization; or

(iv) a trustee of a fund established by an employer or labor organization or a combination of employers and labor organizations for:

(A) employees or former employees or a combination of employees and former employees; or

(B) members or former members of the labor organization or a combination of members and former members;

(b) a professional, trade, or occupational association for its current, former, or retired members or a combination of current, former, and retired members if the association:

(i) is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(ii) has been maintained in good faith for purposes other than obtaining insurance; or

(c) an association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations.

(i) Prior to advertising, marketing, or offering the policy within this state, the association or the insurer of the association shall file evidence with the commissioner that the association has:

(A) a minimum of 100 persons at the outset;

(B) been organized and maintained in good faith for purposes other than obtaining insurance;

(C) been in active existence for at least 1 year; and

(D) a constitution and bylaws requiring that the association hold regular meetings at least annually to further purposes of the membership; except for credit unions, the association collects dues or solicits contributions from members; and the members have voting privileges and representation on the governing board and committees.

(ii) Thirty days after filing, the association is considered as having satisfied the organizational requirements unless the commissioner finds after hearing that the association does not satisfy the organizational requirements.

(d) a group other than as described in subsections (5)(a) through (5)(c) if the commissioner determines that the:

(i) issuance of the group policy is not contrary to the best interests of the public;

(ii) issuance of the group policy would result in economies of acquisition or administration; and

(iii) benefits are reasonable in relation to the premiums charged.

(6) (a) "Long-term care insurance":

(i) means a policy or certificate that is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for a covered person, on an expense-incurred, indemnity, prepaid, or other basis, for a necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, or maintenance or personal care service provided in a setting other than an acute care unit of a hospital;

(ii) may be issued by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization to the extent that it is otherwise authorized to issue life or health insurance;

(iii) includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance;

(iv) includes any product advertised, marketed, or offered as long-term care insurance regardless of any exceptions to the definition included in this section;

(v) includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity; and

(vi) includes qualified long-term care insurance contracts.

(b) Long-term care insurance does not include:

(i) an insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage; or

(ii) life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement and that provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(c) An insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage and that also contains long-term care insurance benefits of a duration of at least 6 months is not required to meet the requirements of this part unless the premium allocable to the long-term care insurance benefits contained in the policy is greater than 25% of the total policy premium.

(7) "Policy" means a policy, contract, membership contract, health care services agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization.

(8) "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person.

(9) "Qualified long-term care insurance contract" means:

(a) an individual or group insurance contract that meets the requirement of section 7702B of the Internal Revenue Code, 26 U.S.C. 7702B, if:

(i) the only insurance protection provided under the contract is coverage of qualified long-term care services;

(ii) the contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under 42 U.S.C. 1395 or would be reimbursable but for the application of a deductible or coinsurance amount;

(iii) the contract is guaranteed renewable;

(iv) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed. All refunds of premiums and all policyholder dividends or similar amounts under the contract are to be applied as a reduction in future premiums or to increase future benefits. However, a refund of the aggregate premium paid under the contract may be allowed in the event of death of the insured or a complete surrender or cancellation of the contract.

(v) the contract contains the consumer protection provisions set forth in section 7702B(g) of the Internal Revenue Code, 26 U.S.C. 7702B(g); or

(b) a life insurance contract that provides long-term care coverage by rider or as a part of the contract as long as the contract complies with section 7702B of the Internal Revenue Code, 26 U.S.C. 7702B.

(10) (a) "Qualified long-term care services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services and maintenance for personal care services for which an insured is eligible under a qualified long-term care insurance contract and that are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(b) For the purposes of this subsection (10), "licensed health care practitioner" means any of the following individuals when licensed in this state:

(i) a physician, as defined in 42 U.S.C. 1395x(r)(1);

(ii) a registered professional nurse;

(iii) a licensed social worker; or

(iv) another individual as determined by rules of the commissioner adopted for purposes of compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(11) "Transferring" means moving into or out of a bed, chair, or wheelchair.

History: En. Sec. 3, Ch. 355, L. 1989; amd. Sec. 2, Ch. 152, L. 1991; amd. Sec. 1, Ch. 240, L. 1995; amd. Sec. 10, Ch. 416, L. 1997.

Cross-References

Policy defined, 33-15-102.

Membership contract defined, 33-30-101.

Health care services agreement defined, 33-31-102.

33-22-1108. Preexisting condition — definition. (1) A long-term care insurance policy or certificate other than a policy or certificate issued to a group, as specified in 33-22-1107(5)(a)(ii), (5)(a)(iii), or (5)(a)(iv), may not use a definition of preexisting condition that is more restrictive than the definition in 33-22-1107.

(2) A long-term care insurance policy or certificate may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within 6 months following the effective date of coverage of an insured person.

(3) If a long-term care insurance policy or certificate replaces, with similar benefits, another long-term care insurance policy or certificate, the insurer issuing the replacing long-term care insurance policy or certificate shall waive any time periods applicable to preexisting conditions or probationary periods in the replacing long-term care insurance policy or certificate to the extent that similar time periods have been satisfied under the original policy.

(4) The commissioner may extend the limitation periods in subsections (1) and (2) as to specific age group categories in specific policy forms if extending the limitation periods is in the best interests of the public.

(5) An insurer may use an application form designed to elicit the complete health history of an applicant and on the basis of the answers on that application perform underwriting in accordance with the insurer's established underwriting standards. Unless otherwise provided in the long-term care insurance policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection (2) expires. A long-term care insurance policy or certificate may not exclude or use a waiver or rider of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (2).

History: En. Sec. 7, Ch. 355, L. 1989; amd. Sec. 151, Ch. 42, L. 1997; amd. Sec. 11, Ch. 416, L. 1997.

33-22-1109 and 33-22-1110 reserved.

33-22-1111. Outline of coverage. (1) (a) An insurer shall deliver an outline of coverage as approved by the commissioner to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.

(b) The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of the outline of coverage.

(c) In the case of insurance producer solicitations, an insurance producer shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(d) In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the earlier of the applicant's request or the delivery of the policy.

(2) The outline of coverage must include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of a group policy must be specifically described.

(d) a statement that the outline of coverage is only a summary of the policy issued or applied for, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(e) a description of the terms under which the policy or certificate may be returned and the premium refunded; and

(f) a brief description of the relationship of cost of care and benefits.

(3) The outline of coverage:

(a) must prominently display the name of the insurer;

(b) must be a freestanding document not dependent for purposes of reader comprehension upon any other document;

(c) must use no smaller than 12-point type; and

(d) may not contain material of an advertising nature.

History: En. Sec. 11, Ch. 355, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 12, Ch. 416, L. 1997.

33-22-1112. Required content for certificate. A certificate issued pursuant to a group long-term care insurance policy that is delivered or issued for delivery in this state must include:

(1) a description of the principal benefits and coverage provided in the policy;

(2) a statement of the principal exclusions, reductions, and limitations contained in the policy; and

(3) a statement that the group master policy determines governing contractual provisions.

History: En. Sec. 12, Ch. 355, L. 1989.

33-22-1113. Disclosure and performance standards for long-term care insurance. (1) The commissioner may by rule adopt standards for full and fair disclosure, setting forth the manner, content, and disclosures required to be made in a long-term care insurance policy, including but not limited to:

(a) terms of renewability;

(b) initial and subsequent conditions of eligibility;

(c) nonduplication of coverage provisions;

(d) coverage of dependents;

(e) preexisting conditions;

(f) termination of insurance;

(g) continuation or conversion;

(h) probationary periods;

(i) limitations;

(j) exceptions;

(k) reductions;

(l) elimination periods;

(m) requirements for replacement;

(n) recurrent conditions;

(o) definition of terms;

(p) prohibitions on limitations and exclusions;

(q) extension of benefits;

(r) discontinuance and replacement of policies;

(s) unintentional lapse;

(t) prohibitions against postclaim underwriting;

(u) minimum standards for home health and community care benefits;

(v) inflation protection;

(w) incontestability period; and

(x) tax consequences.

(2) A group long-term care insurance policy must include a provision relating to conversion on termination of eligibility as described in 33-22-508 or include a provision for continuation of coverage that maintains coverage under the existing group policy if the coverage would otherwise terminate.

History: En. Sec. 5, Ch. 355, L. 1989; amd. Sec. 13, Ch. 416, L. 1997.

Cross-References

Conversion on termination of eligibility, 33-22-508.

33-22-1114. Prohibited practices and policy provisions. (1) An insurance company may not issue a refund to a person other than the owner of the policy or certificate.

(2) A long-term care insurance policy may not:

(a) be canceled, nonrenewed, or otherwise terminated on any grounds other than the insured's or certificate holder's failure to pay the premium;

(b) contain a provision establishing a new waiting period if existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(c) provide coverage for only skilled nursing care or provide substantially more coverage for skilled nursing care in a facility than coverage for lower levels of care.

History: En. Sec. 6, Ch. 355, L. 1989; amd. Sec. 2, Ch. 240, L. 1995; amd. Sec. 14, Ch. 416, L. 1997.

33-22-1115. Prior hospitalization or institutionalization. (1) A long-term care insurance policy may not be delivered or issued for delivery in Montana if the policy conditions eligibility for a benefit:

(a) on a prior hospitalization requirement;

(b) provided in an institutional care setting on the receipt of a higher level of institutional care; or

(c) other than waiver of premium, postconfinement benefits, postacute care benefits, or recuperative benefits, on a prior institutionalization requirement.

(2) A long-term care insurance policy containing a limitation or condition for eligibility other than those prohibited in subsection (1) must clearly label, in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits", the limitations or conditions, including the required number of days of confinement.

(3) A long-term care insurance policy that contains a benefit advertised, marketed, or offered as a home health care benefit may not condition receipt of a benefit on a prior institutionalization requirement.

(4) A long-term care insurance policy that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than 30 days for which benefits are paid.

(5) A long-term care insurance policy that provides a benefit only following institutionalization may not condition the benefit upon admission to a facility for the same or a related condition within a period of less than 30 days after discharge from the institution.

History: En. Sec. 8, Ch. 355, L. 1989; amd. Sec. 15, Ch. 416, L. 1997.

33-22-1116. Nonforfeiture benefits — availability. An insurance company offering a long-term care insurance policy or certificate shall offer to each prospective purchaser the choice between a policy that includes nonforfeiture benefits to the defaulting or surrendering policyholder or certificate holder and one that does not include nonforfeiture benefits.

History: En. Sec. 4, Ch. 240, L. 1995.

33-22-1117. Appropriate sale criteria. (1) Appropriate sale criteria must be established and communicated to the consumer prior to the insurance company's acceptance of a person's application for long-term care insurance.

(2) This section may not preclude the purchase of a long-term care insurance policy by a consumer.

History: En. Sec. 5, Ch. 240, L. 1995.

33-22-1118 reserved.

33-22-1119. Right to return policy — free look. (1) A person insured under an individual long-term care insurance policy has the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason. An individual long-term care insurance policy must have a notice prominently printed on the first page of the policy or attached to it stating that the insured has the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason.

(2) A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason. A long-term care insurance policy or certificate issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to it stating that the insured has the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason.

History: En. Sec. 10, Ch. 355, L. 1989; amd. Sec. 3, Ch. 240, L. 1995.

33-22-1120. Extraterritorial jurisdiction. A group long-term care insurance policy or certificate may not be delivered or issued for delivery to a resident of Montana under a group policy issued in another state unless it is approved by:

(1) the commissioner; and

(2) the insurance regulatory official of a state that has statutory and regulatory long-term care insurance requirements substantially similar to those adopted in Montana.

History: En. Sec. 4, Ch. 355, L. 1989; amd. Sec. 64, Ch. 379, L. 1995.

33-22-1121. Rules. The commissioner may adopt rules necessary to implement this part, including but not limited to rules that:

(1) establish loss ratio standards for long-term care insurance policies;

(2) specify the requirements for offering the sale of a policy with nonforfeiture benefits and the types of appropriate sale criteria to be communicated at the time of application;

(3) establish a requirement for the mandatory triggering of policy benefits based upon the number of activities of daily living that an individual is capable or incapable of performing; and

(4) are necessary to implement a determination made by the secretary of health and human services pursuant to Public Law 104-191 as to who is a licensed health care practitioner.

History: (1)En. Sec. 14, Ch. 355, L. 1989; (2)En. Sec. 9, Ch. 355, L. 1989; amd. Sec. 6, Ch. 240, L. 1995; amd. Sec. 16, Ch. 416, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

General rulemaking authority of Commissioner, 33-1-313.

Notice of hearing, 33-1-703.

Benefit triggers, 33-22-1125.

33-22-1122. Policy waiting periods not cumulative. A waiting or elimination period contained in a long-term care insurance policy under which an insured is required to wait a specified period of time before receiving policy benefits must be concurrent with any 90-day period used to determine whether an individual is a chronically ill individual.

History: En. Sec. 46, Ch. 416, L. 1997.

33-22-1123. Delivery of policy or certificate. If an application for a long-term care insurance policy or a certificate meeting the requirements of Public Law 104-191 is approved, the health insurance issuer of the policy or certificate shall deliver the policy or certificate to the applicant, policyholder, or certificate holder not later than 30 days after the date of issue.

History: En. Sec. 47, Ch. 416, L. 1997.

33-22-1124. Denial of claims. If a claim under a long-term care insurance policy or certificate meeting the requirements of Public Law 104-191 is denied, the health insurance issuer shall, not later than 60 days after the receipt of a written request by the policy holder, certificate holder, or the representative of either of them:

(1) provide a written explanation of the reasons for the denial; and

(2) provide all information possessed by the health insurance issuer relating to the denial.

History: En. Sec. 48, Ch. 416, L. 1997.

33-22-1125. Benefit triggers. (1) A long-term care insurance policy or certificate may not be delivered or issued for delivery in this state unless it complies with the requirements, as established by rules of the commissioner, for the triggering of mandatory provision of benefits.

(2) A qualified long-term care insurance contract must condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expectation of at least 90 days because of a loss of level of disability described under regulations adopted by the U.S. secretary of the treasury and because of:

(a) a loss of functional capacity requiring the substantial assistance of another person to perform the prescribed activities of daily living; or

(b) a severe cognitive impairment requiring substantial supervision, including verbal cueing, by another person to protect the insured from harming the insured or others for from threats to the insured's health or safety.

(3) An insured meets a condition of payment if, within the preceding 12-month period, a licensed health care practitioner has certified that the insured has met the requirements and the practitioner has prescribed the qualified long-term care insurance services pursuant to a plan of care. Eligibility for the payment of benefits may not be more restrictive than requiring a deficiency in the ability to perform not more than three of the activities of daily living.

History: En. Sec. 49, Ch. 416, L. 1997.

Cross-References

Adoption of rules for mandatory triggering of benefits, 33-22-1121.

Part 12

Limited Benefit Disability Insurance (Repealed. Sec. 44, Ch. 531, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

33-22-1201. En. Sec. 1, Ch. 606, L. 1991.

33-22-1202. En. Sec. 2, Ch. 606, L. 1991; amd. Sec. 26, Ch. 504, L. 1995; amd. Sec. 85, Ch. 546, L. 1995.

33-22-1203. En. Sec. 3, Ch. 606, L. 1991.

33-22-1204. En. Sec. 4, Ch. 606, L. 1991.

33-22-1205. En. Sec. 5, Ch. 606, L. 1991.

Parts 13 and 14 reserved

Part 15

Comprehensive Health Association and Plan

33-22-1501. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Association portability plan" means a policy of insurance coverage that is offered by the association to a federally defined eligible individual.

(5) "Association portability plan premium" means the charge determined by the association and approved by the commissioner for an association portability plan.

(6) "Block of business" means a separate risk pool grouping of covered individuals, enrollees, and dependents as defined by rules of the commissioner.

(7) "Eligible person" means an individual who:

(a) is a resident of this state and applies for coverage under the association plan;

(b) unless the individual's eligibility is waived by the association, has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations or has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, that has the effect of substantially reducing coverage from that received by a person considered a standard risk; and

(c) is not eligible for any other form of disability insurance or health service benefits.

(8) "Federally defined eligible individual" means a person who is an individual enrolling in the association portability plan:

(a) for whom, as of the date on which the individual seeks coverage under the association portability plan, the aggregate of the periods of creditable coverage is 18 months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(b) who does not have other health insurance coverage;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) for whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(e) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(f) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(e) if the individual elected the continuation coverage described in subsection (8)(e).

(9) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(10) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(11) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(12) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(13) "Medicare" means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

(14) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 3 years immediately preceding the filing of an application.

(15) "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

History: En. Sec. 1, Ch. 595, L. 1985; amd. Sec. 15, Ch. 798, L. 1991; amd. Sec. 5, Ch. 357, L. 1995; amd. Sec. 17, Ch. 416, L. 1997; amd. Sec. 1, Ch. 173, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 173 in definition of preexisting condition decreased the lookback period for preexisting condition exclusions from 5 years to 3 years; and made minor changes in style. Amendment effective July 1, 1999.

33-22-1502. Duties of the commissioner — rules. The commissioner shall:

(1) adopt rules to carry out the provisions and purposes of this part;

(2) supervise the creation of the association within the limits described in 33-22-1503;

(3) approve the selection of the lead carrier by the association and approve the association's contract with the lead carrier, including the association plan coverage and premiums to be charged;

(4) conduct periodic audits to assure the general accuracy of the financial data submitted by the lead carrier and the association; and

(5) undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this part so that the residents of this state may best avail themselves of the health care benefits provided by this part.

History: En. Sec. 2, Ch. 595, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-22-1503. Comprehensive health association — mandatory membership. (1) There is established a nonprofit legal entity, to be known as the Montana comprehensive health association, with participating membership consisting of all insurers, insurance arrangements, societies, health maintenance organizations, and health service corporations licensed or authorized to do business in this state. The association is exempt from taxation under the laws of this state, and all property owned by the association is exempt from taxation.

(2) All participating members shall maintain their membership in the association as a condition for writing health care benefits policies or contracts in this state. The association shall submit its articles, bylaws, and operating rules to the commissioner for approval.

(3) The association may:

(a) exercise the powers granted to insurers under the laws of this state;

(b) sue or be sued;

(c) borrow money;

(d) enter into contracts with insurers, administrators, similar associations in other states, or other persons for the performance of administrative functions;

(e) establish administrative and accounting procedures for the operation of the association;

(f) provide for the reinsuring of risks incurred as a result of issuing the coverages required by members of the association;

(g) provide for the administration by the association of policies that are reinsured pursuant to subsection (3)(f); and

(h) issue additional types of health insurance policies to provide optional coverage, including medicare supplemental health insurance.

History: En. Sec. 3, Ch. 595, L. 1985; amd. Sec. 6, Ch. 357, L. 1995; amd. Sec. 2, Ch. 173, L. 1999; amd. Sec. 2, Ch. 528, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 173 inserted (3)(c) allowing the association to borrow money; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 528 in (1) near middle after "societies" inserted "health maintenance organizations". Amendment effective January 1, 2000.

33-22-1504. Association board of directors — organization. (1) There is a board of directors of the association, consisting of eight individuals:

(a) one from each of the five participating members of the association with the highest annual premium volume of disability insurance contracts, health maintenance organization health care services agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner;

(b) two members at large who must be participating members of the association, appointed by the commissioner; and

(c) a member at large, appointed by the commissioner to represent the public interest.

(2) The public interest board member is entitled to one board vote. Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member's annual Montana premium volume. However, a board member may not have more than 50% of the vote.

(3) Members of the board may be reimbursed from the money of the association for expenses incurred by them because of their service as board

members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with 33-22-1513.

(4) The commissioner may replace a board member if the commissioner determines that the board member is not actively participating in the affairs of the board or if the participating member does not appoint a board representative within a reasonable time period. A board member appointed under subsection (1)(a) must be replaced by a participating member of the association with the next highest annual Montana premium volume of disability insurance contracts, health maintenance organization health care service agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner.

(5) The commissioner shall include the applicable premium volume of all affiliates, as defined in 33-2-1101, in making the determination required by subsection (1)(a) or (4).

History: **En. Sec. 4, Ch. 595, L. 1985; amd. Sec. 16, Ch. 798, L. 1991; amd. Sec. 7, Ch. 357, L. 1995; amd. Sec. 3, Ch. 173, L. 1999; amd. Sec. 3, Ch. 528, L. 1999.**

Compiler's Comments

1999 Amendments — Composite Section: Chapter 173 in (1)(c) at end deleted "who shall serve in an advisory capacity only"; in (2) inserted first sentence providing that the public interest board member is entitled to one board vote; inserted (4) regarding replacement of a board member; and inserted (5) requiring inclusion of the applicable premium volume of all affiliates under certain conditions. Amendment effective July 1, 1999.

Chapter 528 in (1)(a) after "insurance contracts" inserted "health maintenance organization health care services agreements". Amendment effective January 1, 2000.

33-22-1505. Liability of association membership. No member of the association is liable for the actions of the association or its lead carrier.

History: **En. Sec. 13, Ch. 595, L. 1985.**

33-22-1506 through 33-22-1510 reserved.

33-22-1511. Minimum benefits of association plan. The association through the association plan shall offer a policy that provides at least the benefits required by 33-22-1521.

History: **En. Sec. 5, Ch. 595, L. 1985; amd. Sec. 26, Ch. 798, L. 1991.**

33-22-1512. Association plan and association portability plan premium. The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of association plan premiums for eligible persons may not exceed 200% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The schedule of association portability plan premiums for federally defined eligible individuals may not, for the period of 1 year from July 1, 1997, be less than 135% and may not at any time exceed 150% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The premium rates of the five insurers or health service corporations used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually at the request of the commissioner. The association shall use generally acceptable actuarial principles and structurally compatible rates.

History: **En. Sec. 8, Ch. 595, L. 1985; amd. Sec. 27, Ch. 798, L. 1991; amd. Sec. 8, Ch. 357, L. 1995; amd. Sec. 18, Ch. 416, L. 1997.**

33-22-1513. Operation of association plan and association portability plans. (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual to the lead carrier for an association portability plan, the association may not:

(a) decline to offer an association portability plan; or

(b) impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

(3) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(4) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(5) (a) Each participating member of the association shall share the losses due to claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs in the following manner:

(i) Each participating member of the association must be assessed by the association on an annual basis an amount equal to 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection (5)(a) or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1% assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans.

(ii) The association may abate, in whole or in part, the 1% assessment if the needs of the association plan and the association portability plan do not require the funds generated by the full 1% assessment. The commissioner shall approve any abatement of the 1% assessment.

(iii) Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

(iv) An associate member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(b) For purposes of this subsection (5), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, life insurance, medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments.

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(6) The proportion of the annual assessment allocated to the operation and expenses of the association plan may be offset by an association member against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual assessment is levied. The insurance commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. The proportion of the annual assessment allocated to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member.

History: En. Sec. 9, Ch. 595, L. 1985; amd. Sec. 31, Ch. 112, L. 1991; amd. Sec. 17, Ch. 798, L. 1991; amd. Sec. 29, Ch. 349, L. 1993; amd. Sec. 19, Ch. 416, L. 1997; amd. Sec. 4, Ch. 528, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 528 in (5)(a)(i) through (5)(a)(iv) substituted language providing for assessment of association members for former language that read: "(5) (a) Each participating member of the association shall share the losses due to claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs. Claims expenses of the association plan and the association portability plan that exceed the premium payments allocated to the payment of benefits are the liability of the association members. Association members shall share in the claims expenses of the association plan and the association portability plan and operating and administrative expenses of the association in an amount equal to the ratio of the association member's total disability insurance premium received from or on behalf of Montana residents divided by the total disability insurance premium received by all association members from or on behalf of Montana residents as determined by the commissioner"; in (5)(b) at end inserted "medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments"; inserted (5)(c) providing for the disposition of any excess income; in (6) substituted language pertaining to offsets of annual assessments by association members for former (6) and (7) that read: "(6) The association shall make an annual determination of each association member's liability, if any, and may make an annual fiscal yearend assessment if necessary. Assessments related to the operation and expenses of the association plan must be determined and levied separately from assessments related to the operation and expenses of the association portability plan. The association may also, subject to the approval of the commissioner, provide for interim assessments against the association members as may be necessary to ensure the financial capability of the association in meeting the incurred or estimated claims expenses of the association plan and the association portability plan and operating and administrative expenses of the association until the association's next annual fiscal yearend assessment. Payment of an assessment is due within 30 days of receipt by an association member of a written notice of a fiscal yearend or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days is grounds for termination of membership. An association member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year during which disability insurance business ceased. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(7) Any annual fiscal yearend or interim assessment relating to the operation and expenses of the association plan levied against an association member may be offset, in an amount equal to the assessment paid to the association, against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual fiscal yearend or interim assessment is levied. The insurance commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. Assessments relating to the operation and expenses of the association

portability plan and levied against an association member may not be offset against the premium tax payable by that association member"; and made minor changes in style. Amendment, except for amendment to subsection (5)(b), effective April 30, 1999. Amendment to subsection (5)(b) effective January 1, 2000.

The amendment to this section made by Ch. 173, L. 1999, was rendered void by sec. 8, Ch. 528, L. 1999, a coordination section.

33-22-1514. Administration of association plan — rules. (1) The association shall select one lead carrier to issue the association plan. The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from licensed administrators and the members of the association for the purpose of selecting the lead carrier. The selection of the lead carrier must be based upon criteria established by the board of directors.

(2) The lead carrier shall perform all administrative and claims payment functions required by this section upon the commissioner's approval of the policy forms and contracts submitted. The lead carrier shall provide these services for a period of at least 3 years, unless a request to terminate is approved by the association and the commissioner. The association and the commissioner shall approve or deny a request to terminate within 90 days of its receipt. A failure to make a final decision on a request to terminate within the specified period is considered an approval. The association shall invite submissions of policy forms from members of the association, including the lead carrier, 6 months prior to the expiration of each 3-year period. The association shall follow the procedure provided in subsection (1) in selecting a lead carrier for the subsequent 3-year period or, if a request to terminate is approved, on or before the end of the 3-year period.

(3) The lead carrier shall provide all eligible persons involved in the association plan an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, the method and place of filing claims, and to whom benefits are payable. The certificate must indicate that coverage was obtained through the association.

(4) The lead carrier shall submit to the association, the legislative finance committee, and the commissioner on a semiannual basis a report of the operation of the association plan. The association must determine the specific information to be contained in the report prior to the effective date of the association plan.

(5) The lead carrier shall pay all claims pursuant to this part and shall indicate that the claim was paid by the association plan. Each claim payment must include information specifying the procedure involved in the event a dispute over the amount of payment arises.

(6) The lead carrier must be reimbursed from the association plan premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the portion of the lead carrier's administrative, printing, claims administration, management, and building overhead expenses, which are assignable to the maintenance and administration of the association plan. The association must approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses may not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.

(7) The lead carrier is, when carrying out its duties under this part, an independent contractor for the association and is individually liable for its actions, subject to the laws of this state.

History: En. Sec. 10, Ch. 595, L. 1985; amd. Sec. 28, Ch. 798, L. 1991; amd. Sec. 5, Ch. 528, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 528 in (4) near beginning inserted "the legislative finance committee". Amendment effective April 30, 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-22-1515. Solicitation of eligible persons. (1) The association, pursuant to a plan approved by the commissioner, shall disseminate appropriate information to the residents of this state regarding the existence of the association plan and the means of enrollment. Means of communication may include use of the press, radio, and television, as well as publication in appropriate state offices and publications.

(2) The association shall devise and implement means of maintaining public awareness of this part and shall administer this part in a manner that facilitates public participation in the association plan.

(3) All licensed disability insurance producers may engage in the selling or marketing of the association plan. The lead carrier shall pay an insurance producer's referral fee of at least $25 to each licensed disability insurance producer who refers an applicant to the association plan, if the applicant is accepted. The amount of the referral fee must be set by the board of directors of the association and is subject to the approval of the commissioner. The referral fees must be paid by the lead carrier from money received as premiums for the association plan.

(4) An insurer, society, health maintenance organization, or health service corporation that rejects or applies underwriting restrictions to an applicant for disability insurance shall notify the applicant of the existence of the association plan, requirements for being accepted in the association plan, and the procedure for applying to the association plan.

History: En. Sec. 11, Ch. 595, L. 1985; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 29, Ch. 798, L. 1991; amd. Sec. 9, Ch. 357, L. 1995; amd. Sec. 5, Ch. 173, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 173 in (4) near beginning after "society" inserted "health maintenance organization"; and made minor changes in style. Amendment effective July 1, 1999.

33-22-1516. Enrollment by eligible person. (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant's residence in this state;

(b) the name, address, and age of spouse and children, if any, if they are to be insured;

(c) written evidence that the person fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan.

(4) A person who obtains coverage under the association plan may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 3 years immediately preceding the filing of an application. The association may not apply a preexisting condition exclusion to coverage under the association portability plan if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage. The association shall waive any time period applicable to a preexisting

condition exclusion for the period of time that any other eligible individual was covered under the following types of coverage if the coverage was continuous to a date not more than 30 days prior to submission of an application for coverage under the association plan:

(a) an individual health insurance policy that includes coverage by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided by the association plan; or

(b) an employer-based health insurance benefit arrangement that provides benefits similar to or exceeding the benefits provided by the association plan.

History: En. Sec. 12, Ch. 595, L. 1985; amd. Sec. 30, Ch. 798, L. 1991; amd. Sec. 10, Ch. 357, L. 1995; amd. Sec. 20, Ch. 416, L. 1997; amd. Sec. 6, Ch. 173, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 173 in (4) near end of first sentence before "years" substituted "3" for "5". Amendment effective July 1, 1999.

33-22-1517. Limitations on eligibility. An individual who purchases a policy of insurance pursuant to 33-22-1516 is no longer eligible for insurance under an association plan and is subject to cancellation of enrollment if the individual:

(1) fails to pay the premium for the policy of insurance purchased pursuant to 33-22-1516;

(2) changes residence from Montana to another state;

(3) exceeds the lifetime maximum benefit provided in the association plan; or

(4) enrolls under another disability insurance policy or plan for health service benefits. However, the individual may maintain enrollment in the association plan during a waiting period applicable to preexisting conditions under the other policy or plan. If the individual maintains the association plan during the waiting period, the association plan may coordinate the benefits with the individual's new policy or plan and the benefits of the association plan are considered secondary to the benefits available under the individual's new policy or plan.

History: En. Sec. 1, Ch. 357, L. 1995.

33-22-1518. Unfair referral to plan. An insurer, insurance producer, insurance broker, or third-party administrator may not refer an individual or an individual's dependent to the association plan or arrange for the individual or the individual's employee to apply to the association for enrollment under an association plan in order to separate the individual or the individual's dependent from coverage under a group health insurance contract, policy, or certificate obtained in connection with the individual's employment.

History: En. Sec. 2, Ch. 357, L. 1995.

33-22-1519 and 33-22-1520 reserved.

33-22-1521. Association plan — minimum benefits. A plan of health coverage must be certified as an association plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting part 7), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) (a) The minimum benefits for an insured must, subject to the other provisions of this section, be equal to at least 50% of the covered expenses required by this section in excess of an annual deductible that does not exceed $1,000 per person. The coverage must include a limitation of $5,000 per person on the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject to a maximum lifetime benefit, but the maximums may not be less than $100,000.

(b) One association plan must be offered with coverage for 80% of the covered expenses provided in this section in excess of an annual deductible that does not exceed $1,000 per person. This association plan must provide a maximum lifetime benefit of at least $500,000.

(c) Covered expenses for plans under subsection (1)(a) and (1)(b) must be paid as specified in provider contracts or, in the absence of a provider contract, at the prevailing charge in the state where the service is provided.

(d) The board may authorize other association plans, including managed care plans as defined in 33-36-103.

(2) Covered expenses for plans offered under subsections (1)(a) and (1)(b) must be for the following medically necessary services and articles when prescribed by a physician or other licensed health care professional and when designated in the contract:

(a) hospital services;

(b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;

(c) use of radium or other radioactive materials;

(d) oxygen;

(e) anesthetics;

(f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

(g) services of a physical therapist;

(h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;

(i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of durable medical equipment, which must be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of $1,000;

(k) prosthetics, other than dental;

(l) services of a licensed home health agency, up to a maximum of 180 visits per year;

(m) drugs requiring a physician's prescription that are approved for use in human beings in the manner prescribed by the United States food and drug administration, covered at 50% of the expense, up to an annual maximum of $1,000;

(n) medically necessary, nonexperimental transplants of the kidney, pancreas, heart, heart/lung, lungs, liver, cornea, and high-dose chemotherapy bone marrow transplantation, limited to a lifetime maximum of $150,000, with an additional benefit not to exceed $10,000 for expenses associated with the donor;

(o) pregnancy, including complications of pregnancy;

(p) newborn infant coverage, as required by 33-22-301;

(q) sterilization;

(r) immunizations;

(s) outpatient rehabilitation therapy;

(t) foot care for diabetics;

(u) services of a convalescent home, as an alternative to hospital services, limited to a maximum of 60 days per year; and

(v) travel, other than transportation by a licensed ambulance service, to the nearest facility qualified to treat the patients medical condition when approved in advance by the insurer.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

(i) home and office calls, except as specifically provided in subsection (2);

(ii) rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

(iii) the first $20 of diagnostic x-ray and laboratory charges in each 14-day period;

(iv) oral surgery, except as specifically provided in subsection (2);

(v) that part of a charge for services or articles that exceeds the prevailing charge in the state where the service is provided; or

(vi) care that is primarily for custodial or domiciliary purposes that would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition, except as provided by subsection (2);

(iv) confinement in a private room to the extent that it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles;

(vi) room and board for a nonemergency admission on Friday or Saturday;

(vii) routine well baby care;

(viii) complications to a newborn, unless no other source of coverage is available;

(ix) reversal of sterilization;

(x) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xi) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xii) artificial insemination or treatment for infertility; or

(xiii) breast augmentation or reduction.

History: En. Sec. 6, Ch. 595, L. 1985; amd. Sec. 31, Ch. 798, L. 1991; amd. Sec. 11, Ch. 357, L. 1995; amd. Sec. 152, Ch. 42, L. 1997; amd. Sec. 7, Ch. 173, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 173 in (1)(b) at end before "$500,000" inserted "at least"; inserted (1)(c) regarding payment of covered expenses; inserted (1)(d) allowing authorization of other association plans; in (2) near beginning of introductory clause after "expenses" inserted "for plans offered under subsections (1)(a) and (1)(b)" and after "must be" deleted "the usual and customary charges"; and in (3)(a)(v) near end substituted "state" for "locality". Amendment effective July 1, 1999.

33-22-1522. Repealed. Sec. 34, Ch. 798, L. 1991.

History: En. Sec. 7, Ch. 595, L. 1985.

33-22-1523. Association portability plans. (1) The association shall offer at least two comprehensive health benefit plans designed by the association. The association portability plans may not be delivered or issued for delivery in this state until the policy forms and rates are approved by the commissioner, in accordance with rules adopted by the commissioner. The commissioner may by order extend the date by which the association shall offer the association portability plan until a date not later than January 1, 1998.

(2) The association shall administer the association portability plans as a distinctly separate block of business from the association plan. The claims experience or the expense experience of the association plan may not be combined with the claims experience or expense experience of any association portability plan in the determination of association portability plan premium rates or reserves of any association portability plan.

History: **En. Sec. 41, Ch. 416, L. 1997.**

33-22-1524. Association authority for borrowing. (1) If the amount of the annual assessment collected under 33-22-1513(5) and other available funds is insufficient to meet incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association, the association may borrow from the board of investments for a period not to exceed 2 years any funds necessary for the continued operation of the association plan and the association portability plan. The loaned funds may be used only to pay incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association.

(2) Whenever the association accepts a loan from the board of investments pursuant to this section, it shall repay the loan and any interest required under the terms of the loan through assessments and premium income. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement between the association and the board of investments by repealing the assessment imposed by 33-22-1513(5) or by reducing it below the amount necessary to make annual loan payments.

History: **En. Sec. 1, Ch. 528, L. 1999.**

Compiler's Comments

Effective Date: Section 9(1), Ch. 528, L. 1999, provided that this section is effective on passage and approval. Approved April 30, 1999.

Part 16

Subrogation — Notice

Part Cross-References

State employee group insurance — subrogation — notice, Title 2, ch. 18, part 9.

Health service corporations — subrogation — notice, Title 33, ch. 30, part 11.

33-22-1601. Subrogation rights. A disability insurance policy subject to this chapter may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the insurer is entitled to subrogation, as provided for in 33-22-1602, against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

History: **En. Sec. 1, Ch. 365, L. 1987.**

33-22-1602. Notice — shared costs of third-party action — limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of his intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) An insurer may elect not to participate in the cost of the action. If such an election is made, the insurer waives 50% of any subrogation rights granted to it by 33-22-1601.

(4) The insurer's right of subrogation granted in 33-22-1601 may not be enforced until the injured insured has been fully compensated for his injuries.

History: En. Sec. 3, Ch. 365, L. 1987.

Part 17

Preferred Provider Agreements

33-22-1701. Short title. This part may be cited as the "Preferred Provider Agreements Act".

History: En. Sec. 1, Ch. 638, L. 1987.

33-22-1702. Purpose. The purpose of this part is to allow a health care insurer providing disability insurance benefits to negotiate and contract with health care providers to:

(1) provide health care services to its insureds or subscribers at a reduction in the fees customarily charged by the provider; or

(2) enter into agreements in which the participating providers accept negotiated fees as payment in full for health care services the health care insurer is obligated to provide or pay for under the health benefit plan.

History: En. Sec. 2, Ch. 638, L. 1987.

33-22-1703. Definitions. As used in this part, the following definitions apply:

(1) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(2) "Emergency services" means health care items or services furnished or required to evaluate and treat an emergency medical condition.

(3) "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

(4) "Health care insurer" means:

(a) an insurer that provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a fraternal benefit society as described in 33-7-105; or

(d) any other entity regulated by the commissioner that provides health coverage except a health maintenance organization.

(5) "Health care services" means health care services or products rendered or sold by a provider within the scope of the provider's license or legal authorization or services provided under Title 33, chapter 22, part 7.

(6) "Insured" means an individual entitled to reimbursement for expenses of health care services under a policy or subscriber contract issued or administered by an insurer.

(7) "Preferred provider" means a provider or group of providers who have contracted to provide specified health care services.

(8) "Preferred provider agreement" means a contract between or on behalf of a health care insurer and a preferred provider.

(9) "Provider" means an individual or entity licensed or legally authorized to provide health care services or services covered within Title 33, chapter 22, part 7.

(10) "Subscriber" means a certificate holder or other person on whose behalf the health care insurer is providing or paying for health care coverage.

History: **En. Sec. 3, Ch. 638, L. 1987; amd. Sec. 67, Ch. 713, L. 1989; amd. Sec. 40, Ch. 586, L. 1991; amd. Sec. 32, Ch. 451, L. 1993; amd. Sec. 1, Ch. 413, L. 1997.**

33-22-1704. Preferred provider agreements authorized. (1) Notwithstanding any other provision of law to the contrary, a health care insurer may:

(a) enter into agreements with providers relating to health care services that may be rendered to insureds or subscribers on whose behalf the health care insurer is providing health care coverage, including preferred provider agreements relating to:

(i) the amounts an insured may be charged for services rendered; and

(ii) the amount and manner of payment to the provider; and

(b) issue or administer policies or subscriber contracts in this state that include incentives for the insured to use the services of a provider that has entered into an agreement with the insurer pursuant to subsection (1)(a).

(2) A preferred provider agreement issued or delivered in this state may not unfairly deny health benefits for health care services covered.

(3) A preferred provider agreement entered into or renewed after March 26, 1993, must provide each health care provider with the opportunity to participate on the basis of a competitive bid or offer. For each health care service that an insurer proposes to obtain for its insureds from a preferred provider in the geographic area covered by the proposal, the insurer shall provide all known providers of the health care service in that area with an equal opportunity to submit a competitive bid or offer to become a preferred provider. Except as provided in subsection (5), the insurer shall issue a request for proposals and shall select the lowest cost bid or offer. If only one bid or offer is received, the insurer may enter into a preferred provider agreement with the health care provider.

(4) If a bid or an offer is not received in response to a request for proposals under subsection (3), the insurer may not establish a preferred provider agreement for that service in the geographic area except pursuant to a new request for proposals.

(5) An insurer may reserve the right in its request for proposals to reject bids or offers submitted in response to the request, including the lowest cost bid or offer. A bid or offer must be rejected in the manner established in the request for proposals. An insurer may not enter into a preferred provider agreement for a health care service except pursuant to a request for proposals.

History: **En. Sec. 4, Ch. 638, L. 1987; amd. Sec. 1, Ch. 714, L. 1991; amd. Sec. 1, Ch. 202, L. 1993.**

33-22-1705. Incentives in health benefit plans. (1) A health care insurer may issue a policy or a health benefit plan that provides for incentives for covered persons to use the health care services of preferred providers. The policy or health benefit plan must contain at least:

(a) a provision that if a covered person receives emergency care for services specified in the preferred provider agreement and cannot reasonably reach a preferred provider, the care rendered during the course of the emergency will be reimbursed as though the covered person had been treated by a preferred provider; and

(b) a provision that clearly identifies the difference in benefit levels for health care services of a preferred provider and benefit levels for the same health care services of a nonpreferred provider.

(2) A health care insurer may not require hospital staff privileges as criteria for designation as a preferred provider in a preferred provider agreement.

History: **En. Sec. 5, Ch. 638, L. 1987.**

33-22-1706. Permissible and mandatory provisions in provider agreements, insurance policies, and subscriber contracts. (1) A provider agreement, insurance policy, or subscriber contract issued or delivered in this state may contain certain other components designed to control the cost and improve the quality of health care for insureds and subscribers, including:

(a) a provision setting a payment difference for reimbursement of a nonpreferred provider as compared to a preferred provider. If the health benefit plan contains a payment difference provision, the payment difference may not exceed 25% of the reimbursement level at which a preferred provider would be reimbursed. The commissioner shall review differences between copayments, deductibles, and other cost-sharing arrangements.

(b) conditions, not inconsistent with other provisions of this part, designed to give policyholders or subscribers an incentive to choose a particular provider.

(2) All terms or conditions of an insurance policy or subscriber contract, except those already approved by the commissioner, are subject to the prior approval of the commissioner.

(3) A plan offering prepaid dental services under this part must offer its insureds the right to obtain dental care from any licensed dental care provider of their choice, subject to the same terms and conditions imposed under subsection (1).

History: En. Sec. 6, Ch. 638, L. 1987; amd. Sec. 1, Ch. 265, L. 1989.

Cross-References

Disability insurance — freedom of choice in selection of practitioners, 33-22-111.

Dentist participation as provider through health maintenance organization, 33-31-305.

33-22-1707. Rules. The commissioner may adopt rules necessary to implement the provisions of this part.

History: En. Sec. 7, Ch. 638, L. 1987; amd. Sec. 2, Ch. 413, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 18

Small Employer Health Insurance Availability Act

33-22-1801. Short title. This part may be cited as the "Small Employer Health Insurance Availability Act".

History: En. Sec. 22, Ch. 606, L. 1993.

33-22-1802. Purpose. (1) This part must be interpreted and construed to effectuate the following express legislative purposes:

(a) to promote the availability of health insurance coverage to small employers regardless of health status or claims experience;

(b) to prevent abusive rating practices;

(c) to require disclosure of rating practices to purchasers;

(d) to establish rules regarding renewability of coverage;

(e) to establish limitations on the use of preexisting condition exclusions;

(f) to provide for the development of basic and standard health benefit plans to be offered to all small employers;

(g) to provide for the establishment of a reinsurance program; and

(h) to improve the overall fairness and efficiency of the small employer health insurance market.

(2) This part is not intended to provide a comprehensive solution to the problem of affordability of health care or health insurance.

History: En. Sec. 23, Ch. 606, L. 1993.

33-22-1803. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit value than the small employer carrier's standard benefit plan and that provides the benefits required by 33-22-1827.

(6) "Benefit value" means a numerical value based on the expected dollar value of benefits payable to an insured under a health benefit plan. The benefit value must be calculated by the small employer carrier using an actuarially based method and must take into account all health care expenses covered by the health benefit plan and all cost-sharing features of the health benefit plan, including deductibles, coinsurance, copayments, and the insured individual's maximum out-of-pocket expenses. The benefit value must apply equally to indemnity-type health benefit plans and to managed care health benefit plans, including health maintenance organization-type plans.

(7) "Board" means the board of directors of the program established pursuant to 33-22-1818.

(8) "Bona fide association" means an association that:

(a) has been actively in existence for at least 5 years;

(b) was formed and has been maintained in good faith for purposes other than obtaining insurance;

(c) does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(d) makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member; and

(e) does not make health insurance coverage offered through the association available other than in connection with a member of the association.

(9) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(10) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(11) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(12) "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(13) "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term also includes those persons eligible for coverage under 2-18-704. The term does not include an employee who works on a part-time, temporary, or substitute basis.

(14) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(15) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include coverage of excepted benefits if coverage is provided under a separate policy, certificate, or contract of insurance.

(16) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(17) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(18) "Plan of operation" means the operation of the program established pursuant to 33-22-1818.

(19) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(20) "Program" means the Montana small employer health reinsurance program created by 33-22-1818.

(21) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(22) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to 33-22-1819.

(23) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(24) "Small employer" means a person, firm, corporation, partnership, or bona fide association that is actively engaged in business and that, with respect to a calendar year and a plan year, employed at least 2 but not more than 50 eligible employees during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of a bona fide association.

(25) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(26) "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to 33-22-1828.

33-22-1803. *(Effective July 1, 2001)* **Definitions.** As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit

value than the small employer carrier's standard benefit plan and that provides the benefits required by 33-22-1827.

(6) "Benefit value" means a numerical value based on the expected dollar value of benefits payable to an insured under a health benefit plan. The benefit value must be calculated by the small employer carrier using an actuarially based method and must take into account all health care expenses covered by the health benefit plan and all cost-sharing features of the health benefit plan, including deductibles, coinsurance, copayments, and the insured individual's maximum out-of-pocket expenses. The benefit value must apply equally to indemnity-type health benefit plans and to managed care health benefit plans, including health maintenance organization-type plans.

(7) "Bona fide association" means an association that:

(a) has been actively in existence for at least 5 years;

(b) was formed and has been maintained in good faith for purposes other than obtaining insurance;

(c) does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(d) makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member; and

(e) does not make health insurance coverage offered through the association available other than in connection with a member of the association.

(8) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(9) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(10) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(11) "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(12) "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of

the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term also includes those persons eligible for coverage under 2-18-704. The term does not include an employee who works on a part-time, temporary, or substitute basis.

(13) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(14) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include coverage of excepted benefits if coverage is provided under a separate policy, certificate, or contract of insurance.

(15) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(16) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(17) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(18) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(19) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(20) "Small employer" means a person, firm, corporation, partnership, or bona fide association that is actively engaged in business and that, with respect to a calendar year and a plan year, employed at least 2 but not more than 50 eligible employees during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of a bona fide association.

(21) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(22) "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to 33-22-1828.

History: En. Sec. 24, Ch. 606, L. 1993; amd. Sec. 1, Ch. 377, L. 1995; amd. Sec. 65, Ch. 379, L. 1995; amd. Sec. 21, Ch. 416, L. 1997; amd. Sec. 1, Ch. 103, L. 1999; amd. Sec. 47, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 103 deleted definition of board that read: ""Board" means the board of directors of the program established pursuant to 33-22-1818"; deleted definition of plan of operation that read: ""Plan of operation" means the operation of the program established pursuant to 33-22-1818"; deleted definition of program that read: ""Program" means the Montana small employer health reinsurance program created by 33-22-1818"; deleted definition of reinsuring carrier that read: ""Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to 33-22-1819"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 472 in definition of bona fide association deleted former (f) that read: "(f) meets any additional requirements required by law"; in definition of eligible employee inserted third sentence to include persons eligible for coverage under 2-18-704; and made minor changes in style. Amendment effective October 1, 1999.

33-22-1804. Applicability and scope. (1) This part applies to a health benefit plan marketed through a small employer that provides coverage to the employees of a small employer in this state if any of the following conditions are met:

(a) a portion of the premium or benefits is paid by or on behalf of the small employer;

(b) an eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium;

(c) the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code, except a plan or program that is funded entirely by contributions from the employees; or

(d) all of the premium is paid by the employee who obtains coverage through the employer's group health benefit plan.

(2) This part does not apply to an individual health benefit plan for which the entire premium is paid by an employee through payroll deduction or other means.

(3) Unless prohibited by a written opinion from a federal agency, by final regulations implementing Public Law 104-191, or by a ruling by a court of competent jurisdiction, this part does not apply to an individual health benefit plan if the eligible employee or dependent is directly or indirectly reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium. However, this part does apply to an individual health benefit plan if the employer making the direct or indirect reimbursement for any portion of the premium has had in place an employer-sponsored group health benefit plan in the 12 months preceding the reimbursement.

History: En. Sec. 25, Ch. 606, L. 1993; amd. Sec. 2, Ch. 377, L. 1995; amd. Sec. 22, Ch. 416, L. 1997; amd. Sec. 1, Ch. 403, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 403 in (3) at beginning of first sentence inserted clause concerning federal opinions and court rulings and after "part" substituted "does not apply" for "applies" and inserted second sentence regarding application of part to individual health benefit plan; and made minor changes in style. Amendment effective October 1, 1999.

33-22-1805 through 33-22-1807 reserved.

33-22-1808. Establishment of classes of business. (1) A small employer carrier may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative costs that are related to the following reasons:

(a) The small employer carrier uses more than one type of system for the marketing and sale of health benefit plans to small employers.

(b) The small employer carrier has acquired a class of business from another small employer carrier.

(c) The small employer carrier provides coverage to one or more association groups that meet the requirements of 33-22-501(2).

(2) A small employer carrier may establish up to nine separate classes of business under subsection (1).

(3) The commissioner shall adopt rules to provide for a period of transition in order for a small employer carrier to come into compliance with subsection (2) in the case of acquisition of an additional class of business from another small employer carrier.

(4) The commissioner may approve the establishment of additional classes of business upon application to the commissioner and a finding by the commissioner that the action would enhance the fairness and efficiency of the small employer health insurance market.

History: En. Sec. 26, Ch. 606, L. 1993.

33-22-1809. Restrictions relating to premium rates. (1) Premium rates for health benefit plans under this part are subject to the following provisions:

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For each class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for the class of business; and

(iii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate factors associated with all industry classifications by more than 15% of that coverage.

(f) A small employer carrier shall:

(i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups. Differences among base premium rates may not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.

(ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(g) For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted network provision.

(2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.

(3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:

(a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;

(b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;

(c) the provisions relating to renewability of policies and contracts; and

(d) the provisions relating to any preexisting condition.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with this part and that the rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by the small employer carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of this part and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department.

(6) The commissioner may not require prior approval of the rating methods used by small employer carriers or the premium rates of the health benefit plans offered to small employers.

History: En. Sec. 27, Ch. 606, L. 1993; amd. Sec. 3, Ch. 377, L. 1995; amd. Sec. 9, Ch. 378, L. 1995; amd. Sec. 23, Ch. 416, L. 1997; amd. Sec. 48, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 deleted former (1)(f) that read: "(f) In the case of health benefit plans delivered or issued for delivery prior to January 1, 1994, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (1)(b) until January 1, 1997. In that case, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and

(ii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business"; deleted former (5)(c) that read: "(c) The filing required in subsection (5)(b) must contain the small employer carrier's benefit value"; and made minor changes in style. Amendment effective October 1, 1999.

33-22-1810. Renewability of coverage. (1) A health benefit plan subject to the provisions of this part is renewable with respect to all eligible employees or their dependents, at the option of the small employer, except in any of the following cases:

(a) nonpayment of the required premium;

(b) fraud or misrepresentation of the small employer or with respect to coverage of individual insureds or their representatives;

(c) noncompliance with the carrier's minimum participation requirements;

(d) noncompliance with the carrier's employer contribution requirements;

(e) repeated misuse of a restricted network provision;

(f) election by the small employer carrier to not renew all of its health benefit plans delivered or issued for delivery to small employers in this state, in which case the small employer carrier shall:

(i) provide advance notice of this decision under this subsection (1)(f) to the commissioner in each state in which it is licensed; and

(ii) at least 180 days prior to the nonrenewal of any health benefit plans by the carrier, provide notice of the decision not to renew coverage to all affected small employers and to the commissioner in each state in which an affected insured individual is known to reside. Notice to the commissioner under this subsection (1)(f) must be provided at least 3 working days prior to the notice to the affected small employers.

(g) the commissioner finds that the continuation of the coverage would:

(i) not be in the best interests of the policyholders or certificate holders; or

(ii) impair the carrier's ability to meet its contractual obligations.

(2) If the commissioner makes a finding under subsection (1)(g), the commissioner shall assist affected small employers in finding replacement coverage.

(3) A small employer carrier that elects not to renew a health benefit plan under subsection (1)(f) is prohibited from writing new business in the small employer market in this state for a period of 5 years from the date of notice to the commissioner.

(4) In the case of a small employer carrier doing business in one established geographic service area of the state, the rules set forth in this section apply only to the carrier's operations in that service area.

History: En. Sec. 28, Ch. 606, L. 1993.

33-22-1811. Availability of coverage — required plans. (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier must have approved for issuance to small employer groups at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue all plans marketed under this part to any eligible small employer that applies for a plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part.

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers all plans marketed under this part in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) A small employer carrier that elects not to comply with the requirements of subsections (1)(a) and (1)(b) may continue to provide coverage under health benefit plans previously issued to small employers in this state for a period of no more than 7 years from October 1, 1995, if the carrier:

(i) complies with all other applicable provisions of this part, except 33-22-1810, 33-22-1813, and subsections (2) through (4) of this section;

(ii) does not amend or alter the benefits and coverages of the previously issued health benefit plans unless required to do so by law or rule; and

(iii) complies with all applicable provisions of Public Law 104-91.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not:

(i) because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the individual's enrollment date. A health benefit plan may not define a preexisting condition exclusion more restrictively than 33-22-140.

(ii) use a preexisting condition exclusion more restrictive than exclusions allowed under 33-22-514.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time that an individual was previously covered by creditable coverage that provided benefits with respect to those services if the creditable coverage was continuous to a date not more than 63 days prior to the submission of an application for new coverage. A health benefit plan may determine waivers of time periods applicable to preexisting condition exclusions or limitations on the basis of prior coverage of benefits within each of several classes or categories as specified in regulations implementing Public Law 104-191, rather than as provided in this subsection (3)(b). This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date on which the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier. For the purpose of meeting minimum participation requirements of groups of four or more, a small employer carrier may not consider employees who, because they are covered under another health plan, waive coverage under the small employer's plan as part of the group of eligible employees. However, a small employer carrier may require at least two eligible employees to participate in a plan.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a plan marketed under this part with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(iii) A small employer carrier shall secure a waiver of coverage from each eligible employee who declines, at the sole discretion of the eligible employee, an offer of coverage under a health benefit plan provided by the small employer. The waiver must be signed by the eligible employee and must certify that the employee was informed of the availability of coverage under the health benefit plan and of the penalties for late enrollment. The waiver may not require the eligible employee to disclose the reasons for declining coverage.

(iv) A small employer carrier may not issue coverage to a small employer if the carrier or a producer for the carrier has evidence that the small employer induced or pressured an eligible employee to decline coverage due to the health status or risk characteristics of the eligible employee or of the dependents of the eligible employee.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to an employer whose employees do not work or reside within the small employer carrier's established geographic service area for a network plan, as defined in 33-22-140; or

(ii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees. The small employer carrier may not deny coverage under this subsection unless the small employer carrier acts uniformly without regard to claims experience or health status-related factors of employers, employees, or dependents.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for which the commissioner determines that the small employer carrier does not have the financial reserves necessary to underwrite additional coverage and that the small employer carrier has denied coverage of small employers uniformly throughout the state and without regard to the claims experience and health status-related factors of the applicant small employer groups. The small employer carrier exempted from providing coverage under this subsection may not offer coverage to small employer groups in this state for 180 days after the date on which coverage is denied or until the small employer carrier has demonstrated to the commissioner that the small employer carrier has sufficient financial reserves to underwrite additional coverage, whichever is later.

History: En. Sec. 29, Ch. 606, L. 1993; amd. Sec. 4, Ch. 377, L. 1995; amd. Sec. 95, Ch. 379, L. 1995; amd. Sec. 3, Ch. 522, L. 1995; amd. Sec. 24, Ch. 416, L. 1997; amd. Sec. 1, Ch. 87, L. 1999; amd. Sec. 49, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 87 in (3)(d)(i) inserted second and third sentences providing that a small employer carrier may not consider employees who waive coverage because they are covered under another health plan with respect to minimum participation requirements for groups of four or more and allowing the carrier to require that at least two eligible employees participate in a plan. Amendment effective October 1, 1999.

Chapter 472 in (1)(b)(i) in first sentence after "issue" substituted "all plans marketed under this part" for "a basic health benefit plan or a standard health benefit plan" and after "applies for" substituted "a" for "either" and deleted former second sentence that read: "If, pursuant to Public Law 104-191, an agency of the United States or a court does not prohibit a small employer carrier from doing so, a small employer carrier may offer and issue a group health benefit plan other than a basic or standard plan on an underwritten basis"; in (1)(b)(ii) in first sentence after "employers" substituted "all plans marketed under this part" for "at least one basic health benefit plan and at least one standard health benefit plan"; inserted (1)(c)(iii) requiring compliance with Public Law 104-91; in (3)(a)(i) near middle of first sentence after "following the" substituted "individual's enrollment date" for "effective date of the individual's coverage"; in (3)(b) inserted second sentence regarding waiver of time periods applicable to preexisting condition exclusions or limitations; in (3)(e)(ii) near beginning after "modify a" substituted "plan marketed under this part" for "basic or standard health benefit plan"; and made minor changes in style. Amendment effective October 1, 1999.

33-22-1812. Repealed. Sec. 13, Ch. 377, L. 1995.

History: En. Sec. 31, Ch. 606, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-22-1813. Standards to ensure fair marketing. (1) Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state.

(2) (a) Except as provided in subsection (2)(b), a small employer carrier or producer may not directly or indirectly engage in the following activities:

(i) encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer;

(ii) encouraging or directing small employers to seek coverage from another carrier because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) The provisions of subsection (2)(a) do not apply with respect to information provided by a small employer carrier or producer to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(3) (a) Except as provided in subsection (3)(b), a small employer carrier may not, directly or indirectly, enter into any contract, agreement, or arrangement with a producer that provides for or results in the compensation paid to a producer for the sale of a health benefit plan to be varied because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) Subsection (3)(a) does not apply with respect to a compensation arrangement that provides compensation to a producer on the basis of the percentage of a premium, provided that the percentage may not vary because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic area of the small employer.

(4) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to a producer, if any, for the sale of a basic or standard health benefit plan.

(5) A small employer carrier may not terminate, fail to renew, or limit its contract or agreement of representation with a producer for any reason related to the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employers placed by the producer with the small employer carrier.

(6) A small employer carrier or producer may not induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(7) Denial by a small employer carrier of health insurance coverage for a small employer must be in writing and must state the reason or reasons for the denial.

(8) The commissioner may adopt rules setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(9) (a) A violation of this section by a small employer carrier or a producer is an unfair trade practice under 33-18-102.

(b) If a small employer carrier enters into a contract, agreement, or other arrangement with an administrator who holds a certificate of registration pursuant to 33-17-603 to provide administrative, marketing, or other services related to the offering of health benefit plans to small employers in this state, the administrator is subject to this section as if the administrator were a small employer carrier.

History: En. Sec. 35, Ch. 606, L. 1993; amd. Sec. 50, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) deleted former second sentence that read: "If a small employer carrier denies coverage other than the basic or standard health benefit plans to a small employer on the basis of claims experience of the small employer or the health status or claims experience of its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan or a standard health benefit plan"; and in (7) after "carrier of" substituted "health insurance coverage for" for "an application for coverage from". Amendment effective October 1, 1999.

33-22-1814. Restoration of terminated coverage. The commissioner may promulgate rules to require small employer carriers, as a condition of transacting business with small employers in this state after January 1, 1994, to reissue a health benefit plan to any small employer whose health benefit plan has been terminated or not renewed by the carrier after July 1, 1993. The commissioner may prescribe the terms for the reissuance of coverage that the commissioner finds are reasonable and necessary to provide continuity of coverage to small employers.

History: En. Sec. 36, Ch. 606, L. 1993.

33-22-1815. Qualifications for voluntary purchasing pool. A voluntary purchasing pool of disability insurance purchasers may be formed solely for the purpose of obtaining disability insurance upon compliance with the following provisions:

(1) It contains at least 1,000 eligible employees.

(2) It establishes requirements for membership. The voluntary purchasing pool shall accept for membership any small employers and may accept for membership any employers with more than 50 eligible employees that otherwise meet the requirements for membership. However, the voluntary purchasing pool may not exclude any small employers that otherwise meet the requirements for membership on the basis of claim experience, occupation, or health status.

(3) It holds an open enrollment period at least once a year during which new members can join the voluntary purchasing pool.

(4) It offers coverage to eligible employees of member employers and to the employees' dependents. Coverage may not be limited to certain employees of member small employers except as provided in 33-22-1811(3)(c).

(5) It does not assume any risk or form self-insurance plans among its members.

(6) (a) It has the option of using the following types of rating arrangements with the disability insurance policies, certificates, or contracts:

(i) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool that rate each member employer separately are subject to the provisions of this part.

(ii) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool that rate the entire group as a whole must charge each insured person based on a community rate within the common group, adjusted for case characteristics as permitted by the laws governing group disability insurance.

(b) At its discretion, premiums may be paid to the disability insurance policies, certificates, or contracts by the voluntary purchasing pool, by member employers, or by eligible employees and their dependents.

(7) A person marketing disability insurance policies, certificates, or contracts for a voluntary purchasing pool must be licensed as an insurance producer.

History: En. Sec. 2, Ch. 375, L. 1995; amd. Sec. 51, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (2) in second sentence after "more than" substituted "50" for "25". Amendment effective October 1, 1999.

33-22-1816. Commissioner powers and duties — application for registration — reporting insolvency. (1) The commissioner shall develop forms for registration of an organization as a voluntary purchasing pool.

(2) An organization seeking to be registered as a voluntary purchasing pool shall make application to the commissioner. The commissioner shall register an organization as a voluntary purchasing pool upon proof of fulfillment of the qualifications provided in 33-22-1815.

(3) Except as provided in subsection (5), on March 1 of each year, the voluntary purchasing pool shall provide a report and financial statement for the previous calendar year to the commissioner in order that the commissioner may determine:

(a) whether the operation of the voluntary purchasing pool is fiscally sound;

(b) whether the voluntary purchasing pool is bearing any risk; and

(c) the number of individuals covered.

(4) The annual report of the voluntary purchasing pool must disclose its total administrative cost.

(5) A voluntary purchasing pool may choose to operate on a fiscal year other than on the calendar year. A voluntary purchasing pool that establishes a fiscal year that is other than the calendar year shall provide the report required in subsection (3) to the commissioner within 60 days of the voluntary purchasing pool's fiscal yearend.

History: En. Sec. 3, Ch. 375, L. 1995; amd. Sec. 52, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (3) at beginning inserted exception clause; and inserted (5) allowing a voluntary purchasing pool to operate on a fiscal year other than the calendar year. Amendment effective October 1, 1999.

33-22-1817. Collection of charges and premiums. (1) All insurance or premiums collected by a voluntary purchasing pool on behalf of or for an insurer and all return premiums received from the insurer are held by the voluntary purchasing pool in a fiduciary capacity. These funds must be remitted immediately to the person entitled to them or must be deposited promptly in a fiduciary bank account established and maintained by the administrator of the voluntary purchasing pool. If deposited charges or premiums are collected on behalf of or for more than one insurer, the voluntary purchasing pool shall either keep or require the bank in which the fiduciary account is maintained to keep records clearly recording the deposits to and withdrawals from the account on behalf of each insurer. The voluntary purchasing pool shall promptly obtain and keep copies of all these records and shall, upon request of an insurer, furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for the insurer.

(2) The voluntary purchasing pool may not pay a claim by withdrawals from the fiduciary account. Withdrawals from the fiduciary account must be made, as provided in the written agreement between the voluntary purchasing pool and the insurer, for:

(a) remittance to an insurer entitled to the remittance;

(b) deposit in an account maintained in the name of the insurer;

(c) payment to a group policyholder for remittance to the insurer entitled to the payment; or

(d) remittance of return premiums to the person entitled to the premium.

History: En. Sec. 4, Ch. 375, L. 1995.

33-22-1818. *(Temporary)* **Small employer carrier reinsurance program — board membership.** (1) There is a nonprofit entity known as the Montana small employer health reinsurance program.

(2) The program must operate subject to the supervision and control of the board. The board consists of nine members plus the commissioner or the

commissioner's designated representative, who shall serve as an ex officio member of the board. Five of the members of the board must be representatives of each of the five small employer carriers with the highest annual premium volume derived from health benefit plans issued to small employers in Montana in the previous calendar year. Each of the five companies eligible to name a representative to the board shall notify the commissioner of who the representative will be for the coming term. One member of the board must be from a disability reinsurance carrier. One member of the board must be a representative of an issuer of a health benefit plan with a restricted network provision. One member of the board must be a small employer who is not active in the health care or insurance fields. One member of the board must be a representative of the general public who is employed by a small employer and who is not employed in the health care or insurance fields.

(a) The five board members representing the largest small employer carriers shall nominate and elect the board member representing a disability reinsurance carrier. The commissioner shall appoint the board members representing an issuer of health benefit plans with a restricted network, representing a small employer, and representing an employee of a small employer.

(b) The initial board members' terms are as follows: one-third of the members shall serve a term of 1 year; one-third of the members shall serve a term of 2 years; and one-third of the members shall serve a term of 3 years. Subsequent board members shall serve for a term of 3 years. A board member's term continues until that member's successor is appointed.

(3) On or before March 1 of each year, each assessable carrier shall file with the commissioner the carrier's net health insurance premium derived from health benefit plans issued in this state in the previous calendar year. *(Repealed effective July 1, 2001—secs. 3, 4(2), Ch. 103, L. 1999.)*

History: En. Sec. 30(1)-(3), Ch. 606, L. 1993; amd. Sec. 7, Ch. 377, L. 1995; amd. Sec. 1, Ch. 15, L. 1997.

33-22-1819. *(Temporary)* **Program plan of operation — treatment of losses — exemption from taxation.** (1) Within 180 days after the appointment of the initial board, the board shall submit to the commissioner for review a plan of operation and may at any time submit amendments to the plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the program. The commissioner may review the plan of operation to determine if it is suitable to ensure the fair, reasonable, and equitable administration of the program and if the plan of operation provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The commissioner may make recommendations to the board if the commissioner determines the plan of operation does not meet the criteria of this subsection.

(2) The plan of operation must:

(a) establish procedures for the handling and accounting of program assets and money and for an annual fiscal reporting to the commissioner;

(b) establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

(c) establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) establish procedures for collecting assessments from assessable carriers to fund claims incurred by the program;

(e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to fund administrative expenses incurred or to be incurred by the program; and

(f) provide for any additional matters necessary for the implementation and administration of the program.

(3) The program has the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition, the program may:

(a) enter into contracts as are necessary or proper to carry out the provisions and purposes of this part, including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) take any legal action necessary to avoid the payment of improper claims against the program;

(d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance policies in accordance with the requirements of this part;

(e) establish conditions and procedures for reinsuring risks under the program;

(f) establish actuarial functions as appropriate for the operation of the program;

(g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in operation of the program, policy and other contract design, and any other function within the authority of the program;

(h) to the extent permitted by federal law and in accordance with subsection (8)(c), make annual assessments against assessable carriers and make interim assessments to fund claims incurred by the program;

(i) borrow money to effect the purposes of the program, including borrowing from the general fund at prevailing interest rates for a period not to exceed 2 years any funds necessary for the continued operation of the reinsurance plan. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

(j) provide for the termination of and transition plan for the small employer health reinsurance program and its board by July 1, 2001.

(4) A carrier may not reinsure any new or additional employees or dependents with the program after March 17, 1999.

(5) (a) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent in the program on March 17, 1999, until the carrier has incurred an initial level of claims for the employee or dependent of $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 20% of the next $100,000 of benefit payments during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subsection (5)(a) may not exceed a maximum limit of $25,000 in any calendar year with respect to any reinsured individual.

(b) The board annually shall adjust the initial level of claims and maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

(c) A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan and shall terminate reinsurance with the program for all reinsured employees or dependents of a small employer on a date set by the board but no later than July 1, 2001.

(d) A reinsuring carrier shall apply all managed care and claims-handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(6) (a) As part of the plan of operation, the board shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology must provide for the development of base reinsurance premium rates that must be multiplied by the factors set forth in subsection (6)(b) to determine the premium rates for the program. The base reinsurance premium rates must be established by the board, subject to the approval of the commissioner, and must be set at levels that reasonably approximate the premiums necessary to recover one-half of the expenses for the calendar year. For purposes of this section, expenses include administrative expenses and the actuarially anticipated claims to be incurred, adjusted to reflect retention levels required under this part.

(b) Premiums for the program are as follows:

(i) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection (6).

(ii) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection (6).

(c) The board shall annually review the methodology established under subsection (6)(a), including the system of classification and any rating factors, to ensure that it is actuarially sound and that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology that are subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(7) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in 33-22-1809.

(8) (a) Before March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses, and the actuarially anticipated losses for the calendar year. The sum of the program net loss for the previous calendar year plus one-half of the actuarially anticipated claims to be incurred during the current calendar year and one-half of anticipated administrative expenses during the current calendar year must equal the total assessment amount.

(b) (i) Each assessable carrier shall share in the program in an amount determined by multiplying the total assessment amount by a fraction, the numerator of which is the number of individuals in this state covered under disability insurance by the assessable carrier and the denominator of which is the number of all individuals in this state covered under disability insurance by all assessable carriers.

(ii) The board shall make a reasonable effort to ensure that each insured individual is counted only once for the purpose of assessment. The board shall require each assessable carrier that provides excess of loss or stop loss insurance to include in its count of insured individuals all individuals whose coverage is reinsured in whole or in part, including coverage under excess of loss or stop loss insurance. The board shall allow an assessable carrier who is an excess of loss or stop loss insurer to exclude from its count of insured individuals those who have been counted by a primary disability insurer or by a primary reinsurer.

(iii) The board may use any reasonable method of estimating the number of individuals insured by an assessable carrier if the specific number is unknown.

(c) The board shall make an annual determination in accordance with this section of each assessable carrier's liability for its share of the contribution to the program and, except as otherwise provided by this section, make an annual assessment against each assessable carrier to the extent of that liability. Payment of an assessment is due within 30 days of receipt by the assessable carrier of written notice of the assessment. An assessable carrier that ceases doing business within the state is liable for assessments until the end of the calendar year in which the assessable carrier ceased doing business. The board may determine not to assess an assessable carrier if the assessable carrier's liability determined in accordance with this section does not exceed $10.

(d) The board may establish and maintain program reserves not to exceed five times the actuarially anticipated losses for the calendar year.

(e) If the sum of the reinsurance premiums and assessments in any calendar year exceeds the sum of the administrative expenses and incurred claims for that year, the board may proportionately credit the excess to assessable carriers or it may place the excess in program reserves, subject to the limits in subsection (8)(d).

(9) The participation in the program as reinsuring carriers; the establishment of rates, forms, or procedures; or any other joint collective action required by this part may not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly or separately.

(10) The program is exempt from taxation.

(11) On or before July 1 of each year, the commissioner shall evaluate the operation of the program and report to the governor and the legislature in writing the results of the evaluation. The report must include an estimate of future costs of the program, assessments necessary to pay those costs, the appropriateness of premiums charged by the program, the level of insurance retention under the program, the cost of coverage of small employers, and any recommendations for change to the plan of operation.

(12) All premiums and other money paid to the small employer carrier reinsurance program and all property and securities acquired through the use of money and interest and dividends earned on money belonging to the small employer carrier reinsurance program are solely the property of the program and must be used exclusively for the operations and obligations of the program. Money collected by the program is not subject to legislative appropriation. *(Repealed effective July 1, 2001—secs. 3, 4(2), Ch. 103, L. 1999.)*

History: En. Sec. 30(4)-(15), Ch. 606, L. 1993; amd. Sec. 8, Ch. 377, L. 1995; amd. Sec. 66, Ch. 379, L. 1995; amd. Sec. 2, Ch. 15, L. 1997; amd. Sec. 25, Ch. 416, L. 1997; amd. Sec. 35, Ch. 531, L. 1997; amd. Sec. 2, Ch. 103, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 103 in (3)(i) inserted "including borrowing from the general fund at prevailing interest rates for a period not to exceed 2 years any funds necessary for the continued operation of the reinsurance plan";

inserted (3)(j) allowing the program to "provide for the termination of and transition plan for the small employer health reinsurance program and its board by July 1, 2001"; in (4) substituted "A carrier may not reinsure any new or additional employees or dependents with the program after March 17, 1999" for "A reinsuring carrier may reinsure with the program as provided for in this subsection"; deleted (4)(a) through (4)(c) that read: "(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within 60 days of the commencement of the group's coverage under a health benefit plan.

(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days following the commencement of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within 60 days of the commencement of coverage"; in (5)(a) inserted near beginning "in the program on March 17, 1999"; in (5)(c) inserted "and shall terminate reinsurance with the program for all reinsured employees or dependents of a small employer on a date set by the board but no later than July 1, 2001"; deleted former (4)(f) that read: "(f) A small employer group health benefit plan in effect before January 1, 1994, may not be reinsured by the program until the board determines that sufficient funding sources are available"; deleted former (9) that read: "(9) The board, as part of the plan of operation, shall develop standards setting forth the minimum levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards, the board shall take into consideration the need to ensure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to small employers, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans"; and made minor changes in style. Amendment effective March 17, 1999.

33-22-1820. Periodic market evaluation — report. The commissioner may study and report at least every 3 years to the governor or other interested persons on the effectiveness of this part. The report must analyze the effectiveness of this part in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small employer health insurance markets. The report must address whether carriers and producers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of this part. The report may contain recommendations for market conduct or other regulatory standards or action.

History: En. Sec. 32, Ch. 606, L. 1993; amd. Sec. 9, Ch. 377, L. 1995; amd. Sec. 36, Ch. 531, L. 1997.

33-22-1821. Waiver of certain laws. Except as provided in 33-22-1827, a small employer carrier may exclude any category of licensed health care practitioner and any benefit or coverage for health care services otherwise required by law or rule from a basic health benefit plan delivered or issued for delivery in this state.

History: En. Sec. 33, Ch. 606, L. 1993; amd. Sec. 10, Ch. 377, L. 1995.

33-22-1822. Administrative procedure. The commissioner shall adopt rules in accordance with the Montana Administrative Procedure Act to implement and administer this part.

History: En. Sec. 34, Ch. 606, L. 1993.

33-22-1823 through 33-22-1826 reserved.

33-22-1827. Benefits required in basic health benefit plan. (1) The basic health benefit plan must provide at least the following benefits:

(a) coverage for the services and articles required by 33-22-1521(2);

(b) coverage for mental health and chemical dependency required by Title 33, chapter 22, part 7;

(c) coverage for conversion of benefits required by 33-22-508 and 33-22-510 or by 33-30-1007; and

(d) coverage for mammography examinations required by 33-22-132.

(2) The small employer carrier may determine varying levels of deductibles, copayments, maximum annual out-of-pocket expenses, maximum lifetime benefits, and other financial cost-sharing arrangements with the insured that give the basic health benefit plan a lower benefit value than the standard health benefit plan.

(3) A basic health benefit plan provided by a health maintenance organization or a basic health benefit plan with a restricted network provision must provide a comparable level of benefits to those required by subsections (1) and (2), as determined by the benefit value.

History: En. Sec. 5, Ch. 377, L. 1995; amd. Sec. 5, Ch. 410, L. 1997; amd. Sec. 26, Ch. 416, L. 1997.

33-22-1828. Benefits required in standard benefit plan. (1) The minimum benefits must be equal to at least 75% of the covered expenses in excess of an annual deductible that does not exceed $500 per person or $1,000 per family. The coverage must include a limitation of $2,000 per person or $4,000 per family on the total annual out-of-pocket expenses for services covered. The coverage may be subject to a maximum lifetime benefit, but a maximum, if any, may not be less than $1 million.

(2) The commissioner may not require coverage in a standard health benefit plan for any benefit unless other provisions of Title 33, chapter 22, 30, or 31, specifically require coverage for the benefit. A small employer carrier may offer coverage for additional services and articles.

(3) A standard health benefit plan provided by a health maintenance organization or a basic health benefit plan with a restricted network provision must provide a comparable level of benefits to those required by subsection (1), as determined by the benefit value.

History: En. Sec. 6, Ch. 377, L. 1995; amd. Sec. 27, Ch. 416, L. 1997; amd. Sec. 37, Ch. 531, L. 1997.

Part 19

Obstetricians and Gynecologists — Primary Care Physicians

33-22-1901. Scope — purpose. The provisions of this part apply to all health benefit plans offered to persons who receive health care services in this state. The purpose of this part is to ensure that obstetricians and gynecologists may be participating primary care physicians under health benefit plans offered to patients who receive health care services in this state and that persons covered by health benefit plans have direct access to the services of a participating obstetrician or gynecologist of their choice.

History: En. Sec. 1, Ch. 198, L. 1997.

33-22-1902. Definitions. As used in this part, the following definitions apply:

(1) "Covered person" means a policyholder, subscriber, certificate holder, enrollee, or other individual who is participating in a health benefit plan.

(2) "Health benefit plan" means any individual or group plan, policy, certificate, subscriber contract, contract of insurance provided by a managed care plan, preferred provider agreement, or health maintenance organization subscriber contract that is issued, delivered, issued for delivery, or renewed in this state by a health carrier that pays for, purchases, or furnishes health care services to covered persons who receive health care services in this state. For the purposes of this part, a health benefit plan located or domiciled outside of the state of Montana is subject

to the provisions of this part if it receives, processes, adjudicates, pays, or denies claims for health care services submitted by or on behalf of covered persons who reside or who receive health care services in the state of Montana.

(3) "Health carrier" means a disability insurer, health care insurer, health maintenance organization, accident and sickness insurer, fraternal benefit society, nonprofit hospital service corporation, health service corporation, health care service plan, preferred provider organization or arrangement, multiple employer welfare arrangement, or any other person, firm, corporation, joint venture, or similar business entity.

(4) "Obstetrician or gynecologist" means a physician who is board-eligible or board-certified by the American board of obstetrics and gynecology.

(5) "Participating obstetrician or gynecologist" means an obstetrician or gynecologist who is employed by or under contract with a health benefit plan.

(6) "Primary care physician" means a physician who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of patient care, and for initiating referrals for specialist care.

History: **En. Sec. 2, Ch. 198, L. 1997.**

33-22-1903. Obstetricians or gynecologists as primary care physicians. (1) Each health benefit plan that provides coverage for primary care or obstetrical or gynecological care must allow obstetricians and gynecologists to participate as primary care physicians. The health carrier that provides the health benefit plan shall contract with a sufficient number of obstetricians and gynecologists to ensure that covered persons have access to the options under this section without unreasonable delay if there are obstetricians or gynecologists practicing in the geographic service areas in which the plan operates who are willing to participate in the plan. An obstetrician or gynecologist may not be required to accept primary care physician status if the obstetrician or gynecologist does not wish to be designated as a primary care physician. A health benefit plan must use the same criteria with regard to credentials and other selection criteria for a participating obstetrician or gynecologist as are applied by the health benefit plan with respect to other physicians who are participating in the health benefit plan. An obstetrician or gynecologist wishing to accept designation as a primary care physician must meet the same criteria with regard to credentials and other selection criteria for a participating primary care physician as other physicians who are participating as primary care physicians in the health benefit plan.

(2) Each health benefit plan must allow a covered person to select any participating obstetrician or gynecologist of the covered person's choice as the covered person's primary care physician.

History: **En. Sec. 3, Ch. 198, L. 1997.**

33-22-1904. Self-referral for obstetrical or gynecological care permitted. (1) A health benefit plan must permit self-referral to any participating obstetrician or gynecologist by a covered person who has not selected a participating obstetrician or gynecologist as the covered person's primary care physician for services covered under the health benefit plan. This self-referral is for the purpose of receiving any obstetrical or gynecological examination or care and primary and preventative obstetrical and gynecological services required as a result of any obstetrical or gynecological examination or condition. This self-referral must be allowed without prior authorization or precertification from the health benefit plan or covered person's primary care physician, but the health benefit plan may require the covered person to notify the plan prior to self-referral.

(2) The services covered by this section may be limited to those services defined by the most recent published recommendations of the American college of obstetricians and gynecologists. The self-referral permitted by this section may be

limited to one participating obstetrician or gynecologist for obstetrical care and one participating obstetrician or gynecologist for gynecological care of the covered person's choice annually.

(3) The participating obstetrician or gynecologist and the covered person shall comply with the health benefit plan's coordination and referral policies. The health benefit plan may require the participating obstetrician or gynecologist to whom the covered person self-refers to discuss with the covered person's primary care physician any services or treatment the participating obstetrician or gynecologist recommends for the covered person.

(4) Self-referral under this section may not affect the covered person's coverage under the health benefit plan. It is the intent of this section that a covered person must at all times have direct access to the covered services of the participating obstetrician or gynecologist of the covered person's choice under any health benefit plan.

History: En. Sec. 4, Ch. 198, L. 1997.

33-22-1905. Surcharges not allowed. A health benefit plan may not impose a surcharge or additional copayments or deductibles upon a covered person who seeks or receives health care services under 33-22-1903 or 33-22-1904 unless similar surcharges or additional copayments or deductibles are imposed for other types of health care services not described in 33-22-1903 and 33-22-1904.

History: En. Sec. 5, Ch. 198, L. 1997.

33-22-1906. Payment of covered services provided by certified advanced practice registered nurses. A health benefit plan may not deny payment for covered services provided to a covered person under 33-22-1903 and 33-22-1904 by a certified advanced practice registered nurse practicing in collaboration with the participating obstetrician or gynecologist. This section may not be construed to expand the definitions of participating obstetrician or gynecologist or primary care physician in 33-22-1902 to include certified advanced practice registered nurses.

History: En. Sec. 6, Ch. 198, L. 1997.

33-22-1907. Disclosure. Each health benefit plan shall disclose in all of its plan literature, in clear, accurate language, the covered person's option to seek the care described in this part without preapproval, preauthorization, or referral.

History: En. Sec. 7, Ch. 198, L. 1997.

33-22-1908. Enforcement. If the commissioner determines that a health benefit plan does not comply with this part or that a health carrier has not complied with a provision of this part, the commissioner may:

(1) recommend a correction plan that must be followed by the health carrier;

(2) institute corrective action that must be followed by the health carrier;

(3) suspend or revoke the certificate of authority or deny the health carrier's application for a certificate of authority; or

(4) use any of the commissioner's enforcement powers to obtain the health carrier's compliance with this part.

History: En. Sec. 8, Ch. 198, L. 1997.

CHAPTER 23

CASUALTY INSURANCE

Part 1 — General Provisions

33-23-101. Repealed.
33-23-102. Existence of insurance not to be made evident.
33-23-103. Casualty insurance policy — conformity with state statutes.

Part 2 — Motor Vehicle Liability

33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured.
33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value.
33-23-203. Limitation of liability under motor vehicle liability policy.
33-23-204. Definitions.
33-23-205 through 33-23-210 reserved.
33-23-211. Limitations on basis for cancellation.
33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception — penalty.
33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance.
33-23-214. Advance notice required for nonrenewal — exceptions.
33-23-215. No liability for statements in connection with cancellation or nonrenewal.
33-23-216. Retention and proof of notice.
33-23-217. Return of unearned premiums.

Part 3 — Professional Liability

33-23-301. Cancellation or increase of premium rates by reason of unfounded claims prohibited.
33-23-302. Cancellation or alteration of policy — increase of premium rates — sixty days' written notice required.
33-23-303 through 33-23-310 reserved.
33-23-311. Information required of professional liability insurers — submission.

Part 4 — Homes

33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty.

Chapter Cross-References

Horseraces and race meets — public liability insurance required, 23-4-205.

Premium changes and cancellation of casualty insurance, Title 33, ch. 15, part 11.

Apportionment of casualty insurance — rating groups — pooling, 33-16-305.

Destruction of property to defraud insurer — crime, 45-6-101.

Fire losses — information available to state agencies, 50-63-401.

Suspicious fires — report, 50-63-402.

Transfer of ownership of vehicles by insurance company, 61-3-205.

Physicians, nurses, and hospitals — liens on personal injury claims, Title 71, ch. 3, part 11.

Part 1

General Provisions

33-23-101. Repealed. Sec. 4, Ch. 425, L. 1979.

History: En. Sec. 411, Ch. 286, L. 1959; amd. Sec. 5, Ch. 234, L. 1977; R.C.M. 1947, 40-4401.

33-23-102. Existence of insurance not to be made evident. No attempt may be made in the trial of an action brought against a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff.

History: En. Sec. 1, Ch. 240, L. 1963; amd. Sec. 6, Ch. 234, L. 1977; R.C.M. 1947, 40-4402; amd. Sec. 1, Ch. 425, L. 1979.

Cross-References

Nonadmissibility of liability insurance, Rule 411, M.R.Ev. (see Title 26, ch. 10).

33-23-103. Casualty insurance policy — conformity with state statutes. A casualty insurance policy relative to a risk resident, located, or to be performed in this state must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: **En. Sec. 23, Ch. 798, L. 1991.**

Part 2

Motor Vehicle Liability

Part Cross-References

Attorney fees — motor vehicle claim, 25-10-303.

Collateral source reductions in actions arising from bodily injury or death — subrogation rights, 27-1-308.

Denial of insurance — credit report — consumer's rights, 31-3-131.

Discrimination prohibited — nongender insurance law, 49-2-309.

Motor vehicle — transfer of ownership by insurer, 61-3-205.

Motor vehicle liability policy defined — minimum limits, 61-6-103.

Motor vehicle registration — liability insurance required, Title 61, ch. 6, part 3.

Family member exclusion, 61-6-301.

Motor club service companies — insurance and services, Title 61, ch. 12, part 3.

33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured. (1) No motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle may be delivered or issued for delivery in this state, with respect to any motor vehicle registered and principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom, caused by an accident arising out of the operation or use of such vehicle. An uninsured motor vehicle is a land motor vehicle, the ownership, the maintenance, or the use of which is not insured or bonded for bodily injury liability at the time of the accident.

(2) The named insured shall have the right to reject such coverage. Unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer.

History: **En. Sec. 1, Ch. 31, L. 1967; amd. Sec. 2, Ch. 526, L. 1975; R.C.M. 1947, 40-4403; amd. Sec. 7, Ch. 139, L. 1987; amd. Sec. 40, Ch. 83, L. 1989.**

Cross-References

Approval of forms by Commissioner, Title 33, ch. 1, part 5.

Claims by insureds or third parties against insolvent insurers, 33-2-1367.

33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value. Each motor vehicle insurance policy issued to residents of this state that provides that reimbursement for total loss of a motor vehicle be based on a "book" value rather than on the actual replacement value is void as to that provision, and reimbursement must be made for actual replacement value except as provided in 27-1-306.

History: **En. Sec. 1, Ch. 182, L. 1969; R.C.M. 1947, 40-4404; amd. Sec. 8, Ch. 139, L. 1987; amd. Sec. 2, Ch. 71, L. 1997.**

33-23-203. Limitation of liability under motor vehicle liability policy. (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under each part of the policy must be determined as follows, regardless of the number of motor vehicles insured under the policy, the number of policies issued by the same company covering the insured, or the number of separate premiums paid:

(a) the limits of insurance coverages available for any one accident are the limits specified for each coverage available under the policy insuring the motor vehicle involved in the accident;

(b) if the motor vehicle involved in the accident is not insured under a policy, the limits of the insurance coverages available for any one accident are the highest limits of the coverages specified under one policy for one motor vehicle insured under that policy; and

(c) the limits of the coverages specified under one policy or under more than one policy issued by the same company may not be added together to determine the limits of insurance coverages available under the policy or policies for any one accident.

(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, reductions of coverage, or subrogation clauses that are designed to prevent duplicate payments for the same element of loss under the motor vehicle liability policy or under another casualty policy that provides coverage for an injury that necessitates damages or benefit payments or to prevent the adding together of insurance coverage limits in one policy or from more than one policy issued by the same company.

(3) An insurer that charges a premium for a specified coverage shall clearly inform or notify the insured in writing of the limits of the coverage with respect to the premium charged and whether the coverage from one policy or motor vehicle may be added to the coverage of another policy or motor vehicle.

(4) Nothing in this section is intended to create coverage for a motor vehicle that would otherwise be uninsured.

History: En. Sec. 1, Ch. 212, L. 1981; amd. Sec. 9, Ch. 139, L. 1987; amd. Sec. 1, Ch. 263, L. 1997; amd. Sec. 1, Ch. 495, L. 1997.

33-23-204. Definitions. As used in this part, the following definitions apply:

(1) "Motor vehicle" means a vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state. The term does not include a bicycle as defined in 61-1-123.

(2) "Motor vehicle liability policy" means a policy of automobile or motor vehicle insurance against liability required under Title 61, chapter 6, parts 1 and 3, and all additional coverages included in or added to the policy by rider, endorsement, or otherwise, whether or not required under Title 61, including, without limitation, uninsured, underinsured, and medical payment coverages.

History: En. Sec. 6, Ch. 139, L. 1987; amd. Sec. 2, Ch. 495, L. 1997.

33-23-205 through 33-23-210 reserved.

33-23-211. Limitations on basis for cancellation. (1) A notice of cancellation of a motor vehicle liability policy is effective only if it is based on one or more of the following reasons:

(a) nonpayment of premium; or

(b) the driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(2) This section does not apply to any policy or coverage which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) Modification of motor vehicle physical damage coverage by the inclusion of a deductible not exceeding $100 may not be deemed a cancellation of the coverage or of the policy.

(4) This section does not apply to nonrenewal of a motor vehicle liability policy.

History: En. Sec. 3, Ch. 262, L. 1971; R.C.M. 1947, 40-4407; amd. Sec. 10, Ch. 139, L. 1987.

Cross-References

Revocation or suspension of driver's license, Title 61, ch. 5, part 2.

33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception — penalty. (1) Notwithstanding any other provision of this code, a cancellation by an insurer of a motor vehicle liability insurance policy may not be effective prior to the mailing or delivery to the named insured, at the address shown in the policy, of a written notice of the cancellation stating the date on which, not less than 30 days after the date of such mailing or delivery, the cancellation becomes effective.

(2) A notice of cancellation of a policy to which 33-23-211 applies may not be effective unless mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason must be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation must state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 21 days prior to the effective date of cancellation, the insurer shall specify the reason for the cancellation.

(3) Subsection (2) does not apply to nonrenewal.

(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine not exceeding $500 for each violation thereof.

History: En. Secs. 1, 4, 7, Ch. 262, L. 1971; R.C.M. 1947, 40-4405, 40-4408, 40-4411; amd. Sec. 11, Ch. 139, L. 1987; amd. Sec. 41, Ch. 83, L. 1989; amd. Sec. 53, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (2) near end of second sentence after "less than" substituted "21" for "15"; and made minor changes in style. Amendment effective October 1, 1999.

33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance. Whenever an insurer gives notice of cancellation of a motor vehicle liability policy, upon request of the insured, the insurer, within 15 days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon him by law as may be necessary to ensure compliance with this section.

History: En. Sec. 2, Ch. 262, L. 1971; R.C.M. 1947, 40-4406; amd. Sec. 12, Ch. 139, L. 1987.

Cross-References

General penalty — Montana Insurance Code, 33-1-104.

Hearings by Commissioner, 33-1-701.

33-23-214. Advance notice required for nonrenewal — exceptions. (1) No insurer may fail to renew a motor vehicle liability policy unless it mails or delivers to the named insured, at the address shown in the policy, at least 30 days' advance notice of its intention not to renew. Such notice must contain or be accompanied by a statement that upon written request made not later than 1 month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within 15 days of his request, of the reason or reasons for such nonrenewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the motor vehicle liability policy must terminate on the effective date of any other replacement or succeeding motor vehicle liability policy procured by the insured with respect to any motor vehicle designated in both policies.

(3) This section does not apply where the named insured has failed to discharge when due any of his obligations in connection with the payment of premiums for the policy or the renewal thereof or any installment payments therefor, whether payable directly to the insurer or its insurance producer or indirectly under any premium finance plan or extension of credit.

(4) This section does not apply in any of the following cases:

(a) if the insurer has manifested its willingness to renew;

(b) in case of nonpayment of premium; provided that, notwithstanding the failure of an insurer to comply with this section, the policy must terminate on the effective date of any other insurance policy with respect to any motor vehicle designated in both policies;

(c) if the insured's insurance producer or broker has secured other coverage acceptable to the insured at least 20 days prior to the anniversary date of the policy or termination of the policy period.

(5) Renewal of a motor vehicle liability policy does not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(6) A notice of nonrenewal of a motor vehicle liability policy under this section, which policy has a term of less than 6 months, is effective only when based on one or more of the reasons listed in 33-23-211.

History: En. Sec. 5, Ch. 262, L. 1971; amd. Sec. 1, Ch. 249, L. 1975; R.C.M. 1947, 40-4409; amd. Sec. 13, Ch. 139, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-23-215. No liability for statements in connection with cancellation or nonrenewal. There may be no liability on the part of and no cause of action of any nature may arise against the commissioner or against any insurer, its authorized representative, its insurance producers, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal for any statement made by any of them in any written notice of cancellation or nonrenewal or for statements made or evidence submitted at any hearings conducted in connection therewith.

History: En. Sec. 8, Ch. 262, L. 1971; R.C.M. 1947, 40-4412; amd. Sec. 14, Ch. 139, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

State subject to suit unless exempted by two-thirds vote of each house of Legislature, Art. II, sec. 18, Mont. Const.

Hearings by Commissioner, 33-1-701.

Insurance information and privacy protection, Title 33, ch. 19.

33-23-216. Retention and proof of notice. (1) A notice of cancellation or of intention not to renew or of reasons for cancellation of insurance issued under terms of this chapter must be retained for a period of 3 years by the insurer or his insurance producer within this state and must be made available within this state for examination or inspection by the commissioner or his insurance producers at any time within such 3-year period upon reasonable notice.

(2) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation to the named insured at the address shown in the policy or to the named insured's latest known address is sufficient proof of notice.

History: En. Sec. 6, Ch. 262, L. 1971; amd. Sec. 2, Ch. 469, L. 1977; R.C.M. 1947, 40-4410; amd. Sec. 15, Ch. 139, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-23-217. Return of unearned premiums. If an insurer cancels a motor vehicle policy covering a commercial or private motor vehicle for nonpayment of a premium, the insurer shall process the cancellation on a pro rata basis. The insurer shall return whatever gross unearned premium is due under the motor vehicle policy to the insured. For purposes of this section, the term "unearned premium" means that part of the original premium, including deposits, not yet earned by the insurer and therefore due the insured if the policy is canceled.

History: En. Sec. 1, Ch. 121, L. 1987.

Part 3

Professional Liability

Part Cross-References

Professional liability insurance, Title 33, ch. 9, part 1.

Professional licensing — medical practitioners, Title 37, ch. 3 through 12, 17, 18.

Discrimination prohibited — nongender insurance law, 49-2-309.

33-23-301. Cancellation or increase of premium rates by reason of unfounded claims prohibited. Whenever an action for damages is filed against or a claim or demand for damages is made to an insurer of a physician and surgeon, dentist, registered nurse, nursing home administrator, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed as such under the laws of this state, or against a licensed hospital or long-term care facility as the employer of any such person, in an action, claim, or demand for error, omission, professional negligence, or performance of services without consent, and such action, claim, or demand is later determined to be unfounded and no payment is made by the insurer to the claimant on behalf of such licensee or licensed hospital or long-term care facility or is finally determined to establish nonliability to plaintiff by such licensee or licensed hospital or long-term care facility, the fact of such litigation, claim, or demand shall not be a ground for cancellation or for any increase in insurance premium rates of the professional liability insurance during the term of the policy.

History: En. Sec. 1, Ch. 210, L. 1971; amd. Sec. 1, Ch. 303, L. 1973; R.C.M. 1947, 40-4413.

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

33-23-302. Cancellation or alteration of policy — increase of premium rates — sixty days' written notice required. Any insurer who insures a physician and surgeon, dentist, registered nurse, nursing home administrator, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed under the laws of this state, or a licensed hospital or long-term care facility as the employer of any such person against liability for error, omission, professional negligence, or performance of services without consent may not cancel or alter the policy insuring the person or increase the premium rates thereon without first providing the insured 60 days' written notice of the insurer's intention to cancel or alter the policy or increase the premium rates.

History: En. Sec. 1, Ch. 14, L. 1971; amd. Sec. 2, Ch. 303, L. 1973; R.C.M. 1947, 40-4414; amd. Sec. 18, Ch. 798, L. 1991.

33-23-303 through 33-23-310 reserved.

33-23-311. Information required of professional liability insurers — submission. (1) For purposes of this section, "profession" means the occupations engaged in by physicians, osteopaths, registered nurses, licensed practical nurses, dentists, optometrists, podiatrists, chiropractors, hospitals, attorneys, certified public accountants, public accountants, architects, veterinarians, pharmacists, and professional engineers.

(2) Each insurance company engaged in issuing professional liability insurance in the state of Montana shall include the following information, by profession, from its experience in the state of Montana, in its annual statement to the commissioner:

(a) the number of insureds as of December 31 of the calendar year next preceding;

(b) the amount of earned premiums paid by the insureds during the calendar year next preceding;

(c) the number of claims made against the insurer's insureds and the number of claims outstanding as of December 31 of the calendar year next preceding;

(d) the number of claims paid by the insurer during the calendar year next preceding and the total monetary amount thereof;

(e) the number of lawsuits filed against the insurer's insureds and the number of insureds included therein during the calendar year next preceding;

(f) the number of lawsuits previously filed against the insurer's insureds which were dismissed without settlement or trial and the number of insureds included therein during the calendar year next preceding;

(g) the number of lawsuits previously filed against the insurer's insureds which were settled without trial, the total monetary amount paid as settlements in such settled cases, and the number of insureds included therein during the calendar year next preceding;

(h) the number of lawsuits against the insurer's insureds which went to trial during the calendar year next preceding and the number of such cases ending in the following:

(i) judgment or verdict for the plaintiff;

(ii) judgment or verdict for the defendant;

(iii) other;

(i) the total monetary amount paid out in those lawsuits specified in subsection (2)(h);

(j) the total number of the insurer's insureds included in those lawsuits specified in subsection (2)(h);

(k) the number of new trials granted during the calendar year next preceding;

(l) the number of lawsuits pending on appeal as of December 31 of the next preceding calendar year; and

(m) such other information and statistics as the commissioner considers necessary.

(3) The commissioner shall, within 60 days of request, submit in writing to the appropriate licensing authority the data and information furnished him pursuant to this section relevant to the particular profession or facility.

History: (1)En. 40-2827 by Sec. 1, Ch. 212, L. 1977; Sec. 40-2827, R.C.M. 1947; (2)En. 40-2828 by Sec 2, Ch. 212, L. 1977; Sec. 40-2828, R.C.M. 1947; (3)En. 40-2829 by Sec. 3, Ch. 212, L. 1977; Sec. 40-2829, R.C.M. 1947; R.C.M. 1947, 40-2827, 40-2828, 40-2829.

Cross-References

Statistical records of court actions — Supreme Court administrator, 3-1-702.

Montana State Board of Medical Examiners — insurer reporting requirements, 37-3-402.

Part 4
Homes

Part Cross-References

Credit insurance on real property — borrower allowed choice of insurers, 33-18-501.

Discrimination prohibited — nongender insurance law, 49-2-309.

33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty. (1) No insurer shall cancel or refuse to renew any policy insuring private residences including but not limited to fire, homeowner, theft, or liability insurance on any home occupied by the insured as a domicile without first giving to the insured 30 days' notice in writing, including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy.

(2) Violation of this section is punishable under 33-1-104.

History: En. Secs. 1, 2, Ch. 374, L. 1971; amd. Secs. 1, 2, Ch. 82, L. 1975; R.C.M. 1947, 40-4415, 40-4416.

Cross-References

Home owner insurance not affected by day-care operations, 33-15-1111.

CHAPTER 24
PROPERTY INSURANCE

Part 1 — General Provisions

33-24-101. Measure of the indemnity — rescission for fraud.
33-24-102. Insuring improvements — insurance equal to true value.
33-24-103. Specific valuation — loss equal to insured value.
33-24-104. Tax lien on insured property destroyed by fire.
33-24-105. Property insurance policy — conformity with state statutes.

Chapter Cross-References

Denial of insurance — credit report — consumer's rights, 31-3-131.

Consumer loans — insurance as security, 32-5-306.

Property insurance — definition, 33-1-210.

Premium changes and cancellation of property insurance, Title 33, ch. 15, part 11.

Credit insurance on real or personal property — borrower allowed choice of insurers, 33-18-501.

Destruction of property to defraud insurer — crime, 45-6-101.

Discrimination prohibited — nongender insurance law, 49-2-309.

Fire losses — information available to state agencies, 50-63-401.

Report of suspicious fires, 50-63-402.

Part 1
General Provisions

33-24-101. Measure of the indemnity — rescission for fraud. If there is no valuation in the policy and unless a basis more favorable to the insured is provided for in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured, in the condition in which it was at the time of the injury; but a valuation, fraudulent in fact, entitles the insurer to rescind the contract.

History: En. Sec. 409, Ch. 286, L. 1959; R.C.M. 1947, 40-4301.

Cross-References

Fraud, 28-2-404 through 28-2-406.

Indemnity, Title 28, ch. 11, part 3.

Construction of policies, 33-15-316.

33-24-102. Insuring improvements — insurance equal to true value. Whenever any policy of insurance shall be written to insure any improvements upon real property in this state against loss or damage and the property insured is considered to be a total loss, without criminal fault on the part of the insured or his assigns, the amount of insurance written in such policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages. The payment of money as a premium for insurance shall be prima facie evidence that the party paying such insurance premium is the owner of the property insured; provided, that any insurance company may set up fraud in obtaining the policy as a defense to a suit thereon.

History: En. Sec. 410, Ch. 286, L. 1959; R.C.M. 1947, 40-4302; amd. Sec. 25, Ch. 303, L. 1981.

Cross-References

Construction of policies, 33-15-316.

33-24-103. Specific valuation — loss equal to insured value. (1) This section applies to policies, except motor vehicle insurance policies, which insure specific listed items of personal property against any loss or damage.

(2) If the insurer places specific valuations upon particular items of covered property and bases the premium charge on these valuations, then he shall compute any total loss or total damage to the property, when covered, at the stated valuation with no deductions or offsets.

History: En. 40-4303 by Sec. 1, Ch. 96, L. 1974; R.C.M. 1947, 40-4303; amd. Sec. 26, Ch. 303, L. 1981.

33-24-104. Tax lien on insured property destroyed by fire. If taxes are due and unpaid on property covered by fire insurance and damaged or destroyed by fire, the government entity owed the taxes has a lien on fire insurance proceeds paid in relation to that property in the amount of the unpaid taxes.

History: En. Sec. 2, Ch. 447, L. 1989.

Cross-References

Tax liens and limitations, Title 15, ch. 16, part 4.

33-24-105. Property insurance policy — conformity with state statutes. A property insurance policy relative to a risk resident, located, or to be performed in this state must contain a provision or the equivalent thereto as follows:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

History: En. Sec. 24, Ch. 798, L. 1991.

CHAPTER 25

MONTANA TITLE INSURANCE ACT

Part 1 — General Provisions

33-25-101. Renumbered 33-25-211 by Code Commissioner, 1985.
33-25-102. Renumbered 33-25-212 by Code Commissioner, 1985.
33-25-103. Repealed.
33-25-104. Short title.
33-25-105. Definitions.
33-25-106. Application.
33-25-107 through 33-25-110 reserved.
33-25-111. Abstracts of title distinguished from title insurance policy and preliminary report.

Part 2 — Powers and Duties of Title Insurers

33-25-201. Escrow, closing, or settlement services — title indemnification — maintenance of accounts — maintenance of nominal or short-term accounts — rules.
33-25-202. Sharing of rate proceeds.
33-25-203 through 33-25-210 reserved.
33-25-211. Guaranty fund — investments.
33-25-212. Rates filed with commissioner.
33-25-213. Limitations on authority.
33-25-214. Underwriting standards — record retention.
33-25-215. Report of claims.
33-25-216. Notice of issuance of mortgagee policy.

Part 3 — Regulation by Commissioner of Insurance

33-25-301. Refusal, suspension, or revocation of title insurance producer's license.
33-25-302. Disapproval of agency contracts.

Part 4 — Prohibited Practices—Penalties

33-25-401. Prohibited practices — referrals — splitting charges — exemptions.
33-25-402. Prohibited practices — penalties — treble damages, court costs, and attorney fees — injunction.
33-25-403. Prohibited practices — producer and associates — prohibition of favored insurance producer or insurer.

Chapter Cross-References

Title plant owned by title insurer or title insurance producer — exemption from taxation, 15-6-201.

Title plant owned by title insurer or title insurance producer — deduction of value from taxable property, 15-24-602.

Title insurance — definition, 33-1-212.

Commissioner to approve policy forms, Title 33, ch. 1, part 5.

Combinations of insuring powers, 33-2-108.

Examination of applicant for title insurance producer's license, 33-17-212.

Discrimination prohibited — nongender insurance law, 49-2-309.

Authority to be trustee — trust indentures, 71-1-306.

Part 1

General Provisions

33-25-101. Renumbered 33-25-211 by Code Commissioner, 1985.

33-25-102. Renumbered 33-25-212 by Code Commissioner, 1985.

33-25-103. Repealed. Sec. 22, Ch. 519, L. 1985.

History: En. Sec. 415, Ch. 286, L. 1959; R.C.M. 1947, 40-4601; amd. Sec. 2, Ch. 84, L. 1983.

33-25-104. Short title. This chapter may be cited as the "Montana Title Insurance Act".

History: En. Sec. 1, Ch. 519, L. 1985.

33-25-105. Definitions. As used in this chapter, the following definitions apply:

(1) "Abstract" means a written representation, provided pursuant to a contract and expected to be relied upon by the person who has contracted for the receipt of that representation, listing all recorded conveyances, instruments, or documents which, under the laws of this state, impart constructive notice regarding the chain of title to real property described in the abstract. Abstract includes "abstract of title".

(2) "Applicant" means a person, whether or not a prospective insured, who applies to a title insurer or title insurance producer for a title insurance policy, but does not include a title insurance producer.

(3) "Approved attorney" means an attorney authorized to practice law in this state, except an agent or employee of a title insurer, whose certification as to the status of the title to real property a title insurer is willing to accept as the basis for issuance of a title insurance policy.

(4) "Associate" means a:

(a) corporation, partnership, or other business entity organized for profit, of which a producer of title business is a director, officer, partner, employee, or owner of 5% or more of its equity or capital;

(b) franchisor or franchisee of a producer of title business;

(c) spouse, parent, or child of a producer of title business;

(d) corporation, partnership, or other business entity that controls, is controlled by, or is under common control with a producer of title business; or

(e) person with whom a producer of title business or an associate has an agreement, arrangement, understanding, or course of conduct having the purpose or substantial effect of evading the provisions of this title.

(5) "Controlled business" means that portion of the business of title insurance in this state of a title insurer or title insurance producer that is referred to it by a producer or associate having a financial interest in the title insurer or title insurance producer.

(6) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly, to 1% or more of the net profits or net worth of the entity in which the interest is held.

(7) "Preliminary report" means an offer to issue a title insurance policy subject to any exceptions stated in the report or other matters that may be incorporated by reference therein. Preliminary report includes a commitment or binder.

(8) "Producer of title business" or "producer" means a person, corporation, partnership, or other business entity, including an officer, director, or owner of 5% or more of the equity or capital thereof, engaged in this state in the trade, business, occupation, or profession of:

(a) buying or selling interests in real property;

(b) making loans secured by interests in real property; or

(c) acting as broker, insurance producer, or representative of a person described in subsection (8)(a) or (8)(b).

(9) "Rate" means fees for:

(a) issuing a title insurance policy, including any service charge or fee for the issuance;

(b) abstracting, searching, and examining title to real property when prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy; and

(c) preparing or issuing preliminary reports, commitments, binders, or similar products prepared or issued in contemplation of or in conjunction with the issuance of a title insurance policy.

(10) "Refer" means to direct, cause to be directed, or exercise an influence over the direction of title insurance business, whether or not the consent or approval of another person is sought or obtained with respect to the referral.

(11) "Title insurance business" means:

(a) issuing or offering to issue a title insurance policy as an insurer;

(b) transacting or proposing to transact any of the following as a title insurer or title insurance producer, in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) soliciting or negotiating the issuance of a title insurance policy;

(ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches;

(iii) handling escrows, settlements, or closings;

(iv) executing title insurance policies, reports, commitments, binders, and endorsements;

(v) effecting contracts of reinsurance; or

(vi) abstracting, searching, or examining titles;

(c) transacting, as a title insurer or insurance producer, matters subsequent to the issuance of a title insurance policy and arising out of the policy; or

(d) doing or proposing to do business that, in substance, is equivalent to any of the activities described in subsections (11)(a) through (11)(c) in a manner designed to evade the provisions of this title.

(12) "Title insurance policy" means a contract by which, subject to its stated terms and conditions, a title insurer insures or indemnifies the insured against loss or damage sustained by reason of:

(a) defects in or liens or encumbrances on the title to the stated property;

(b) unmarketability of the title to the stated property; or

(c) invalidity or unenforceability of liens or encumbrances on the stated property.

(13) (a) "Title insurance producer" means a person who holds a valid title insurance producer's license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

(iv) issue policies of the title insurer.

(b) Title insurance producer does not include an approved attorney.

(14) "Title insurer" means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer so authorized.

(15) "Title plant" means a set of privately maintained records in which entries have been made of documents imparting constructive notice, under the law, of matters affecting title to real property, an interest therein, or an encumbrance thereon, that have been filed or recorded in the jurisdiction for which the title plant is maintained and from which the ownership of real property within the jurisdiction can be ascertained and liens, encumbrances, defects, and clouds on title to the real property can be determined.

History: En. Sec. 2, Ch. 519, L. 1985; amd. Secs. 1, 3, Ch. 713, L. 1989.

Cross-References

Title plant owned by title insurer or title insurance producer — exemption from taxation, 15-6-201.

Title plant owned by title insurer or title insurance producer — deduction of value from taxable property, 15-24-602.

Title insurance — definition, 33-1-212.

33-25-106. Application. (1) This chapter applies to all title insurers, title insurance rating organizations, title insurance producers, applicants for title insurance, title insurance policyholders, and all other persons engaged in title insurance business in this state.

(2) This chapter does not authorize the practice of law by a person who is not licensed to practice law in this state, and this chapter does not authorize the commissioner to regulate the practice of law.

History: **En. Sec. 3, Ch. 519, L. 1985; amd. Sec. 3, Ch. 713, L. 1989.**

33-25-107 through 33-25-110 reserved.

33-25-111. Abstracts of title distinguished from title insurance policy and preliminary report. (1) A title insurance policy is not an abstract of title or representation as to the condition of title to the stated property.

(2) A preliminary report is not an abstract of title. The rights, duties, and liabilities applicable to the preparation and issuance of an abstract of title are not applicable to the issuance of a preliminary report. A preliminary report does not constitute a representation as to the condition of title to real property, but constitutes a statement of the terms and conditions upon which the issuer is willing to issue its title insurance policy.

History: **En. Sec. 4, Ch. 519, L. 1985.**

Part 2

Powers and Duties of Title Insurers

33-25-201. Escrow, closing, or settlement services — title indemnification — maintenance of accounts — maintenance of nominal or short-term accounts — rules. (1) A title insurer or title insurance producer may provide escrow, settlement, or closing services, or any combination of those services and may operate as an escrow, settlement, or closing agent subject to the provisions of subsections (2) through (9).

(2) A title insurer or title insurance producer shall:

(a) deposit funds accepted in connection with an escrow, settlement, closing, or title indemnification in a separate fiduciary trust account in a bank or other financial institution insured by an agency of the federal government and segregate the funds by escrow, settlement, closing, or title indemnification in its records. The funds are the property of the person entitled to the funds under the terms of the escrow, settlement, closing, or title indemnification and are not subject to debts of the title insurer or title insurance producer. A title insurer or title insurance producer may use the funds only in accordance with the terms of the individual escrow, settlement, closing, or title indemnification under which the funds are accepted.

(b) except as provided in subsections (3) through (7), pay any interest received on funds deposited with it in connection with an escrow, settlement, closing, or title indemnification to the depositing person or as otherwise provided by the terms of the escrow, settlement, closing, or title indemnification;

(c) maintain separate records of all receipts and disbursements of escrow, settlement, closing, or title indemnification funds; and

(d) comply with rules adopted by the commissioner pertaining to escrow, settlement, closing, or title indemnification transactions.

(3) In the absence of written instructions to the contrary, a title insurer or title insurance producer may maintain a pooled, interest-bearing, depository account for deposit of trust funds that are nominal in amount or expected to be held for a short period of time. The account must comply with the following provisions:

(a) The account may include only trust funds that are nominal in amount or that are expected to be held for a short period of time.

(b) Interest from the account may not be made available to the title insurer or title insurance producer.

(c) The determination of whether trust funds are nominal in amount or to be held for a short period of time is to be determined by each title insurer or title insurance producer.

(d) Notification to parties whose funds are nominal in amount or to be held for a short period of time is not required.

(4) An interest-bearing account established pursuant to subsection (3) may be established with any financial institution that is authorized by federal or state law to do business in the state in which the title insurer's or title insurance producer's office is situated and that is a member of the federal deposit insurance corporation. Funds deposited in the accounts must be subject to withdrawal upon request and without delay.

(5) (a) The Montana land title association shall establish the Montana land title foundation for the administration of the funds generated by the interest on trust accounts program for the following purposes:

(i) to support Montana nonprofit charitable organizations;

(ii) to provide continuing education programs for licensed title insurance agents; and

(iii) to promote knowledge and awareness of the real estate and title insurance industries.

(b) The foundation shall establish bylaws for the administration of the foundation in accordance with subsections (5)(a)(i) through (5)(a)(iii).

(6) A title insurer or title insurance producer depositing funds in an account created pursuant to subsections (3) and (4) shall direct the depository institution to:

(a) at least quarterly, remit interest and dividends, less any service charges or fees, on the average monthly balance on the account or as otherwise computed in accordance with the institution's standard accounting practice for other depositors to the Montana land title association foundation; and

(b) transmit with each remittance to the foundation a statement showing the name of the title insurer or title insurance producer for whom the remittance is sent and the rate of interest applied.

(7) The Montana land title association foundation shall maintain records of each remittance and statement received from depository institutions for a period of at least 3 years and shall, upon request, promptly make available to a title insurer or title insurance producer the records and statements pertaining to the title insurer's or title insurance producer's account.

(8) All interest transmitted to the Montana land title association foundation must, after deductions for necessary and reasonable administrative expenses of the foundation for operating the interest on trust accounts program, be distributed by the foundation for the purposes set forth in subsections (5)(a)(i) through (5)(a)(iii) in whatever proportion the foundation determines is appropriate.

(9) A title insurance producer shall keep books of account, records, and vouchers pertaining to any escrow, closing, settlement, or title indemnification business transacted, in a manner that allows the commissioner or the commissioner's authorized representative to readily ascertain, under the authority of 33-1-402, whether the title insurance producer has complied with all applicable provisions of this title.

History: En. Sec. 7, Ch. 519, L. 1985; amd. Secs. 1, 3, Ch. 713, L. 1989; amd. Sec. 1, Ch. 250, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-25-202. Sharing of rate proceeds. Title insurers and insurance producers may share rate proceeds between or among themselves in any combination and may accept commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee.

History: **En. Sec. 11, Ch. 519, L. 1985; amd. Sec. 61, Ch. 713, L. 1989.**

33-25-203 through 33-25-210 reserved.

33-25-211. Guaranty fund — investments. (1) A title insurer shall establish and maintain the guaranty fund required under 33-2-517 and may invest in necessary plant and equipment and in other investments as authorized under this section.

(2) In addition to other investments eligible under this part, a title insurer may invest and have invested an amount not exceeding 50% of its paid-in capital stock in its title plant, in equipment, and with the commissioner's consent, in stock of abstract companies and of title insurance producers.

(3) Investments authorized by this section may not be credited against the insurer's required guaranty fund or unearned premium reserve provided for under 33-2-517.

(4) A title plant and equipment may not be allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost.

History: **En. Sec. 417, Ch. 286, L. 1959; R.C.M. 1947, 40-4603; Sec. 33-25-101, MCA 1983; redes. 33-25-211 by Code Commissioner, 1985; amd. Sec. 47, Ch. 304, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 304 at end of (1) substituted "this section" for "33-2-851"; inserted (2) concerning investment in title plant, equipment, and abstract companies; inserted (3) concerning investments not credited against guaranty fund or unearned premium reserve; inserted (4) concerning exclusion of title plant and equipment from financial condition determination; and made minor changes in style. Amendment effective July 1, 1999.

33-25-212. Rates filed with commissioner. (1) Every title insurer shall file with the commissioner a complete schedule of rates to be charged by it for title insurance as to property located in this state. The rates shall be all-inclusive of the total charge for such insurance as specified in the policy and shall be accompanied by supporting data.

(2) No such rate shall be excessive, inadequate, or unreasonably discriminatory.

(3) No title insurer shall charge any rate for such insurance other than the applicable rate previously filed by it with the commissioner.

History: **En. Sec. 416, Ch. 286, L. 1959; R.C.M. 1947, 40-4602; amd. Sec. 27, Ch. 303, L. 1981; Sec. 33-25-102, MCA 1983; redes. 33-25-212 by Code Commissioner, 1985.**

Cross-References

Hearings by Commissioner, 33-1-701.

33-25-213. Limitations on authority. (1) An insurer that transacts or is licensed to transact a class or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact the business of title insurance in this state and may not transact, underwrite, or issue title insurance. An insurer authorized to transact any combination of kinds of insurance, including title insurance, under an existing certificate of authority may continue to do so until the certificate of authority is renewed effective June 1, 1986.

(2) A title insurer may not engage in the business of guaranteeing payment of the principal or interest of bonds or mortgages.

(3) A title insurer may not engage in the business of guaranteeing the obligations of other persons, except its title insurance producers or approved attorneys in the normal course of its business.

History: **En. Sec. 5, Ch. 519, L. 1985; amd. Sec. 3, Ch. 713, L. 1989.**

Cross-References

Combinations of insuring powers, 33-2-108.

33-25-214. Underwriting standards — record retention. (1) A title insurer may not issue a title insurance policy unless it, its title insurance producer, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title insurance producer shall preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title insurance producer may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, a title insurer or title insurance producer may not knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured arising under the policy.

History: En. Sec. 6, Ch. 519, L. 1985; amd. Sec. 62, Ch. 713, L. 1989.

33-25-215. Report of claims. A title insurance producer must immediately report every loss claim to the title insurer that issued the policy against which the claim is presented.

History: En. Sec. 9, Ch. 519, L. 1985; amd. Sec. 3, Ch. 713, L. 1989.

33-25-216. Notice of issuance of mortgagee policy. (1) A title insurer or title insurance producer that issues a mortgagee's policy of title insurance on a loan made simultaneous to the purchase of all or part of the property securing the loan, when no owner's policy has been ordered, must inform the borrower in writing that the mortgagee's policy is to be issued, that the mortgagee's policy does not protect the borrower, and that the borrower may obtain an owner's title insurance policy for his protection. This notice must be provided, on a form prescribed by the commissioner, before issuance of the mortgagee's policy.

(2) If the borrower elects not to purchase an owner's title insurance policy, the title insurer or title insurance producer must obtain from him a statement in writing that the notice has been received and that the borrower waives the right to purchase an owner's title insurance policy. If the buyer refuses to provide the statement and waiver, the title insurer or title insurance producer must so note in the file. The statement and waiver must be on a form prescribed by the commissioner and must be retained by the title insurer or title insurance producer for at least 5 years after receipt.

History: En. Sec. 15, Ch. 519, L. 1985; amd. Sec. 3, Ch. 713, L. 1989.

Part 3

Regulation by Commissioner of Insurance

33-25-301. Refusal, suspension, or revocation of title insurance producer's license. (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license a person as a title insurance producer or may suspend or revoke a title insurance producer's license if, after a hearing held after notice as required in 33-17-1001, he finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title insurance producer license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in the conduct of his affairs under his title insurance producer's license, used coercive practices or shown himself to be financially irresponsible;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a person licensed as a title insurance producer for the actions described in subsection (1) of any individual designated in the license to exercise its powers.

History: En. Sec. 10, Ch. 519, L. 1985; amd. Sec. 63, Ch. 713, L. 1989.

33-25-302. Disapproval of agency contracts. (1) The commissioner may disapprove a title agency contract between a title insurance producer and title insurer, upon appropriate notice to the parties to the contract, if he finds that the contract, together with all amendments and related documents:

(a) does not provide for adequate monitoring of the insurance producer's financial transactions; or

(b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title insurance producer. Factors the commissioner may consider in this determination include but are not limited to the insurance producer's duties under the contract and the general level of amounts paid to or retained by other title insurance producers in the state performing or assuming comparable duties.

(2) A person may not act as a title insurance producer under an agency contract that has been disapproved by the commissioner.

History: En. Sec. 8, Ch. 519, L. 1985; amd. Sec. 64, Ch. 713, L. 1989.

Part 4

Prohibited Practices — Penalties

33-25-401. Prohibited practices — referrals — splitting charges — exemptions. (1) Except as provided in subsection (2), a person may not:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title insurance producer; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance agency, if:

(i) at or prior to the time of a referral, a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range of charges generally made by the title insurance producer to which the person is referred; and

(ii) the person is not required to use a particular insurance producer.

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as insurance producer or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title insurance producer for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed.

History: En. Sec. 12, Ch. 519, L. 1985; amd. Sec. 65, Ch. 713, L. 1989.

33-25-402. Prohibited practices — penalties — treble damages, court costs, and attorney fees — injunction. (1) A person found to have violated the provisions of 33-25-401 is jointly and severally liable to the person charged for the title insurance business involved in the violation for an amount equal to three times the amount of the charge paid for the business.

(2) In a civil action based on 33-25-401 and this section, the court may award to the prevailing party court costs plus reasonable attorney fees.

(3) The commissioner may bring a civil action to enjoin a violation of 33-25-401.

History: En. Sec. 13, Ch. 519, L. 1985.

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Injunctions, Title 27, ch. 19.

33-25-403. Prohibited practices — producer and associates — prohibition of favored insurance producer or insurer. A producer or associate may not, directly or indirectly, require as a condition, agreement, or understanding of providing another person a loan, loan extension, credit, sale, property, contract, lease, or service that the other person obtain title insurance of any kind from a particular title insurer or title insurance producer. A title insurer or title insurance producer may not knowingly participate in a plan or transaction prohibited by this section.

History: En. Sec. 14, Ch. 519, L. 1985; amd. Sec. 66, Ch. 713, L. 1989.

CHAPTER 26

SURETYSHIP

Part 1 — Surety Insurance

33-26-101. Corporations as sureties.
33-26-102. Requisites of undertakings or bonds of individuals.
33-26-103. Rights of surety insurer to give bond.
33-26-104. Surety insurers as sole surety on official bonds — release.
33-26-105. Surety companies not permitted to furnish bonds where indemnity required.
33-26-106. Cost of surety bond to be allowed in account of officer.

33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety.

Chapter Cross-References

Suretyship, Title 28, ch. 11, part 4.

Surety insurance — definition, 33-1-211.

Guaranteed arrest bond certificates — filing undertaking, 46-9-412.

Part 1

Surety Insurance

33-26-101. Corporations as sureties. (1) In all cases where an undertaking or bond, with any number of sureties, is authorized or required by any law of this state, any corporation with a paid-up capital of not less than $100,000, incorporated under the laws of this state for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law, may become and shall be accepted as security or as a sole and sufficient security upon such undertaking or bond, and such corporate surety shall be subject to all liabilities and entitled to all the rights of natural persons as such sureties.

(2) Whenever the liabilities of any such corporation shall exceed its assets, the state auditor shall require the deficiency to be paid up in 60 days, and if it is not so paid up, then he shall issue a certificate showing the extent of such deficiency, and he shall publish the same once a week for 3 weeks in a daily paper published in the town or city wherein the principal office of such corporation is, and until such deficiency is paid up such company shall not be accepted as a surety on any undertaking or bond. In estimating the condition of any such company, the state auditor shall allow as assets only such as are allowed under existing laws at the time and shall charge as liabilities, in addition to 80% of the capital stock, all outstanding indebtedness of the company and the premium reserved equal to 50% of the premiums charged by said company on all risks then in force.

History: Ap. p. Sec. 1, p. 70, L. 1893; re-en. Sec. 1900, C. Civ. Proc. 1895; re-en. Sec. 7193, Rev. C. 1907; re-en. Sec. 9826, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1056; re-en. Sec. 9826, R.C.M. 1935; Sec. 93-8711, R.C.M. 1947; Ap. p. Sec. 2, p. 70, L. 1893; re-en. Sec. 1901, C. Civ. Proc. 1895; re-en. Sec. 7195, Rev. C. 1907; re-en. Sec. 9827, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1057; re-en. Sec. 9827, R.C.M. 1935; Sec. 93-8712, R.C.M. 1947; R.C.M. 1947, 93-8711, 93-8712(part).

Cross-References

Appeals to Supreme Court — applicability, Rule 8, M.R.App.P. (see Title 25, ch. 21).

33-26-102. Requisites of undertakings or bonds of individuals. In all cases where an undertaking or bond or undertaking with sureties is authorized or required by any law of this state, the officer taking the same must, except in the case of corporations as mentioned in 33-26-101, require the sureties to accompany it with an affidavit that they are each responsible and are residents and householders or freeholders within the state and are each worth the sum specified in the undertaking or bond, over and above all their just debts and liabilities, exclusive of property exempt from execution. When the amount specified in the undertaking or bond exceeds $3,000 and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than the amount specified in the undertaking or bond if the whole amount be equivalent to that of two sufficient sureties.

History: Ap. p. Sec. 433, p. 131, Bannack Stat.; re-en. Sec. 593, p. 157, Cod. Stat. 1871; re-en. Sec. 523, p. 177, L. 1877; re-en. Sec. 523, 1st Div. Rev. Stat. 1879; re-en. Sec. 540, 1st Div. Comp. Stat. 1887; en. Sec. 1899, C. Civ. Proc. 1895; re-en. Sec. 7192, Rev. C. 1907; re-en. Sec. 9825, R.C.M. 1921; re-en. Sec. 9825, R.C.M. 1935; Sec. 93-8710, R.C.M.

1947; Ap. p. Sec. 2, p. 70, L. 1893; re-en. Sec. 1901, C. Civ. Proc. 1895; re-en. Sec. 7195, Rev. C. 1907; re-en. Sec. 9827, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1057; re-en. Sec. 9827, R.C.M. 1935; Sec. 93-8712, R.C.M. 1947; R.C.M. 1947, 93-8710, 93-8712(part).

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Appeals to Supreme Court — applicability, Rule 8, M.R.App.P. (see Title 25, ch. 21).

Appeals from Justice's Court — applicability, 25-33-203.

Affidavit — definition, 26-1-1001.

33-26-103. Rights of surety insurer to give bond. A surety insurer authorized as such under this code shall have the power to become the surety on bonds and undertakings required by law, subject to all the rights and liabilities of private persons. This section shall not be deemed to limit in any way the powers, obligations, and liabilities of such insurers as provided for in other provisions of this code.

History: En. Sec. 412, Ch. 286, L. 1959; R.C.M. 1947, 40-4501.

Cross-References

Suretyship — general provisions, Title 28, ch. 11, part 4.

Certificate of authority required, 33-2-101.

33-26-104. Surety insurers as sole surety on official bonds — release. (1) Whenever any bond, undertaking, recognizance, or other obligation is by law or the charter, ordinance, or rules of any municipality, board, body, organization or public officer required or permitted to be made, given, tendered, or filed, with surety or sureties, and whenever the performance of any act, duty, or obligation or the refraining from any act is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance, or guaranty may be executed by a surety insurer qualified to act as surety or guarantor as in this code provided. Such execution by such insurer of such bond, undertaking, obligation, recognizance, or guaranty shall be in all respects a full and complete compliance with every requirement of the law, charter, ordinance, or rule that such bond, undertaking, obligation, recognizance, or guaranty shall be executed by one surety or by one or more sureties or that such surety shall be a resident or householder or freeholder, or either or both, or possessed of any other qualifications. All courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat accordingly such bond, undertaking, obligation, recognizance, or guaranty when so executed by such insurer, as conforming to and fully and completely complying with every such requirement of every such law, charter, ordinance, or rule.

(2) A surety insurer may be released from its liability on a bond referred to in this section upon the same terms and conditions as are by law prescribed for the release of individual sureties.

History: En. Secs. 413, 414, Ch. 286, L. 1959; R.C.M. 1947, 40-4502, 40-4503.

Cross-References

Official bonds — general provisions, Title 2, ch. 9, parts 5 through 8.

33-26-105. Surety companies not permitted to furnish bonds where indemnity required. No foreign or other surety company shall be permitted to furnish the bond for any state, county, or city official, where such company requires in addition to the payment of reasonable premiums any indemnity or other security.

History: En. Sec. 1, Ch. 6, L. 1911; re-en. Sec. 6234, R.C.M. 1921; re-en. Sec. 6234, R.C.M. 1935; R.C.M. 1947, 40-1725.

Cross-References

Indemnity defined, 28-11-301.

33-26-106. Cost of surety bond to be allowed in account of officer. Any court or officer whose duty it is to pass upon the account of any person or corporation required by law to give a bond may, whenever such person or corporation has given any such surety company as surety upon such bond, allow in the settlement of such account a reasonable sum for the expense of procuring such surety.

History: En. Sec. 23, Ch. 139, L. 1909; re-en. Sec. 6228, R.C.M. 1921; re-en. Sec. 6228, R.C.M. 1935; R.C.M. 1947, 40-1724.

33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety. It shall be lawful for any executor, administrator, guardian, receiver, trustee, or other party of whom a bond, undertaking, or other obligation is required to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible with a bank, savings bank, safe-deposit, or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof without the written consent of such surety or sureties or an order of court or a judge thereof made on such notice to such surety or sureties as such court or judge may direct. Such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

History: En. Sec. 1, Ch. 146, L. 1943; R.C.M. 1947, 40-1703.

CHAPTER 27

INDEPENDENT LIABILITY FUND

Part 1 — General Provisions

33-27-101. Short title.
33-27-102. Purpose.
33-27-103. Definitions.
33-27-104. Rules.
33-27-105 through 33-27-110 reserved.
33-27-111. Right to establish independent liability fund.
33-27-112. Establishment of independent liability fund.
33-27-113. Additions to independent liability fund.
33-27-114. Limit on the amount of fund.
33-27-115. Composition of independent liability fund.
33-27-116. Inviolability of fund.
33-27-117. Deduction of costs.
33-27-118. Taxation of independent liability fund contributions.
33-27-119. Termination of independent liability fund.

Part 1

General Provisions

Part Cross-References

Tax liability on termination of independent liability fund, 15-30-107.

Tax deductibility, 15-30-127.

33-27-101. Short title. Sections 15-30-107, 15-30-127, 15-31-117, 15-31-118, and this chapter may be cited as the "Independent Liability Fund Act".

History: En. Sec. 1, Ch. 564, L. 1987.

33-27-102. Purpose. The purpose of 15-30-107, 15-30-127, 15-31-117, 15-31-118, and this chapter is to create a means by which small businesses operating in Montana may establish independent liability funds to set aside assets or make investments to meet any liability claims that might be made against the small businesses by third parties.

History: **En. Sec. 2, Ch. 564, L. 1987.**

33-27-103. Definitions. As used in 15-30-107, 15-30-127, 15-31-117, 15-31-118, and this chapter, the following definitions apply:

(1) "Fiscal year" means the 12-month period used by a particular small business in preparing and filing its Montana individual income tax, corporate license tax, or corporate income tax return.

(2) "Independent liability fund" means a collection of money, assets, and investments that has been set aside by a small business to meet the needs of any liability claims, except workers' compensation claims, brought against it by third parties.

(3) "Liability claim" means any legal or extralegal action by a third party asserting a right to compensation for a wrong done to it by a small business with an independent liability fund.

(4) "Small business" means any commercial or nonprofit enterprise qualified to do business in the state and qualified as a small business under the criteria established by the federal small business administration on April 20, 1987.

(5) "Third party" means a person other than an employee or the management of a small business or of a subsidiary or closely related enterprise of a small business.

History: **En. Sec. 3, Ch. 564, L. 1987.**

33-27-104. Rules. (1) The commissioner has authority to implement this chapter and to make any rules and regulations required to carry out the purposes of this chapter.

(2) The commissioner shall by rule establish criteria for ascertaining the inviolability and health of each independent liability fund and shall initiate sanctions against funds that are not secure or viable.

History: **En. Sec. 19, Ch. 564, L. 1987.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-27-105 through 33-27-110 reserved.

33-27-111. Right to establish independent liability fund. A small business operating in the state may establish an independent liability fund to provide for defense, settlement, or payment of any liability claims against it by a third party.

History: **En. Sec. 4, Ch. 564, L. 1987.**

33-27-112. Establishment of independent liability fund. A small business shall notify the commissioner, on a form supplied by the commissioner, of its intention to establish an independent liability fund. The small business shall fully and clearly designate the money, assets, or investments it is setting aside for its independent liability fund.

History: **En. Sec. 5, Ch. 564, L. 1987.**

33-27-113. Additions to independent liability fund. Within the limits provided in 33-27-114, a small business may make such additions to its independent liability fund as it considers appropriate.

History: **En. Sec. 6, Ch. 564, L. 1987.**

33-27-114. Limit on the amount of fund. The independent liability fund of any small business may not be greater than the larger of the following:

(1) the total of all legally required liability insurance; or

(2) five times the gross sales of the small business in its most recent fiscal year.

History: En. Sec. 7, Ch. 564, L. 1987.

33-27-115. Composition of independent liability fund. The money, assets, and investments contributed to an independent liability fund must meet the criteria established for investments by an insurance company in chapter 12 and must be valued as those assets and investments would be valued.

History: En. Sec. 8, Ch. 564, L. 1987; amd. Sec. 48, Ch. 304, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 304 substituted reference to chapter 12 for reference to chapter 2, part 8; and made minor changes in style. Amendment effective July 1, 1999.

33-27-116. Inviolability of fund. Once money, assets, or investments have been contributed to an independent liability fund, they may not be used or removed from the fund except in the manner prescribed by 33-27-117 and 33-27-119.

History: En. Sec. 12, Ch. 564, L. 1987.

33-27-117. Deduction of costs. (1) The actual costs of administering an independent liability fund may be deducted from the fund or from income arising out of the money, assets, and investments in the fund. Such costs include the cost of defending against or negotiating a settlement of any liability claim, as well as the full amount of any claim paid.

(2) A small business may not deduct the cost of any in-house administration of its independent liability fund. The commissioner may review any third-party arrangement for administration of an independent liability fund to ascertain whether such costs are deductible under this section.

History: En. Sec. 13, Ch. 564, L. 1987.

33-27-118. Taxation of independent liability fund contributions. The net value of independent liability fund contributions for any given fiscal year is taxed in accordance with 33-2-705(2).

History: En. Sec. 16, Ch. 564, L. 1987.

33-27-119. Termination of independent liability fund. (1) When a small business with an independent liability fund ceases its operations, either voluntarily or involuntarily, it shall provide a trust to administer any principal remaining in its fund and to pay any outstanding claims for the longest of the following applicable periods:

(a) any statute of limitations applicable to operations of that particular small business;

(b) any legally required period of insurance coverage; or

(c) 15 years.

(2) The principal of an independent liability fund must remain inviolate, except as it is needed to pay just claims, for the full applicable termination period. However, income from the principal not needed for administrative costs may be paid during the termination period to the person or persons who are designated to ultimately receive the principal of the fund, and such income is taxable to that person or persons.

History: En. Sec. 17, Ch. 564, L. 1987.

CHAPTERS 28 AND 29

RESERVED

CHAPTER 30

HEALTH SERVICE CORPORATIONS

Part 1 — General Provisions

33-30-101. Definitions.
33-30-102. Application of this chapter — construction of other related laws.
33-30-103. Purposes of health service corporation.
33-30-104. No profit organization may be a health service corporation.
33-30-105. Examination of a health service corporation.
33-30-106. Montana Administrative Procedure Act applicable.
33-30-107. Annual statement.
33-30-108. License required.
33-30-109 and 33-30-110 reserved.
33-30-111. Notice of violation — conference.
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Part 2 — Finance

33-30-201. Reserves — requirements suspended.
33-30-202. Annual report by certified public accountant.
33-30-203. Premium tax exemption.
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Part 3 — Operations

33-30-301. Forms — filing, approval.
33-30-302. Allowed contracts.
33-30-303. Grievance procedure for members.
33-30-304. Nonliability for injuries caused by contractees.
33-30-305. Prohibited trade practices.
33-30-306. Discrimination between individuals — restrictions — ratesetting by commissioner prohibited.
33-30-307. Notice of rate increases.
33-30-308 through 33-30-310 reserved.
33-30-311. Insurance producer.
33-30-312. Repealed.
33-30-313. Repealed.

Parts 4 through 9 reserved

Part 10 — Health Service Corporation Plans

33-30-1001. Newborn infants covered by insurance by health service corporation.
33-30-1002. Disability coverage of services received in state institutions — coverage of persons eligible for public medical assistance.
33-30-1003. Continuation of coverage for persons with disabilities — individual contracts.
33-30-1004. Continuation of coverage for persons with disabilities — group contracts.
33-30-1005. Right of rescission.
33-30-1006. Continuing group coverage after termination.
33-30-1007. Conversion on termination of eligibility.
33-30-1008. Preexisting conditions.
33-30-1009. Insured's family — conversion entitlement.
33-30-1010. Renumbered 33-30-1021 by Code Commissioner, 1983.
33-30-1011. Dentists performing services common to both medicine and dentistry.
33-30-1012. Repealed.
33-30-1013. Coverage required for services provided by nurse specialists.
33-30-1014. Coverage for well-child care.
33-30-1015. Limitation of eligibility on conversion.
33-30-1016. Coverage for adopted children from time of placement — preexisting conditions.
33-30-1017. Coverage required for services provided by naturopathic physicians.
33-30-1018 through 33-30-1020 reserved.
33-30-1021. Applicability.

Part 11 — Subrogation—Notice
33-30-1101. Subrogation rights.
33-30-1102. Notice — shared costs of third-party action — limitation.

Chapter Cross-References

Jurisdiction of providers of health care benefits, Title 33, ch. 1, part 11.

Comprehensive health association and plan, Title 33, ch. 22, part 15.

Licenses — discrimination in issuance prohibited, 49-3-204.

Living will declaration — not required as condition for insurance coverage, 50-9-205.

Living wills — effect on insurance, 50-9-205.

Part 1

General Provisions

33-30-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care, and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary.

(2) "Health services" means the health care and services provided by hospitals or other health care institutions, organizations, associations, or groups and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry, and podiatry; nursing services; licensed acupuncturist services; licensed social worker, licensed professional counselor, or psychologist; medical appliances, equipment, and supplies; drugs, medicines, ambulance services, and other therapeutic services and supplies.

(3) "Membership contract" means any agreement, contract, or certificate by which a health service corporation describes the health services or benefits provided to its members or beneficiaries.

History: En. 40-5901 by Sec. 1, Ch. 319, L. 1975; R.C.M. 1947, 40-5901(1) thru (3); amd. Sec. 14, Ch. 544, L. 1983; amd. Sec. 3, Ch. 606, L. 1987; amd. Sec. 2, Ch. 362, L. 1991.

Cross-References

Board of Social Work Examiners and Professional Counselors, 2-15-1854.

Nonprofit corporations, Title 35, ch. 2.

Licensing — medical professions, Title 37.

Qualifications and licensing of social workers, Title 37, ch. 22.

33-30-102. Application of this chapter — construction of other related laws. (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-3-308; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict the provisions of this chapter prevail.

History: En. 40-5902 by Sec. 2, Ch. 319, L. 1975; R.C.M. 1947, 40-5902; amd. Sec. 3, Ch. 558, L. 1987; amd. Sec. 67, Ch. 379, L. 1995; amd. Sec. 38, Ch. 531, L. 1997.

Cross-References

Montana Insurance Code — exception for health service corporations, 33-1-102.

Administrative penalty for failure to pay promptly, 33-18-233.

Insurance information and privacy protection — definitions, 33-19-104.

Medicare supplement insurance minimum standards — definitions, 33-22-903.

33-30-103. Purposes of health service corporation. A health service corporation may be organized for the purposes of:

(1) (a) establishing and operating a voluntary, nonprofit plan or plans under which health services, or reimbursement therefor, are furnished to persons who become members or beneficiaries; or

(b) acting as agent or intermediary for other health service corporations, for governmental body or agency, or for other corporations, associations, partnerships, or individuals in the field of health care and services; and

(2) research, education, or related activity to further objects within the purview of this chapter.

History: En. 40-5903 by Sec. 3, Ch. 319, L. 1975; R.C.M. 1947, 40-5903.

33-30-104. No profit organization may be a health service corporation. No group, association, or organization created for or engaged in business or activity for profit, provision for the incorporation of which is made by any of the corporation laws of this state, may be organized or operated, directly or indirectly, as a health service corporation under this chapter.

History: En. 40-5904 by Sec. 4, Ch. 319, L. 1975; R.C.M. 1947, 40-5904.

Cross-References

Nonprofit corporations, Title 35, ch. 2.

33-30-105. Examination of a health service corporation. (1) If the commissioner believes a health service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that corporation.

(2) In addition to the examination authorized in subsection (1), at least once every 4 years, the commissioner shall conduct an examination of each health service corporation to determine if the corporation is fulfilling its contractual obligations by prompt satisfaction of claims at the highest monetary level consistent with reasonable dues or fees, and that the corporation's management exercises appropriate fiscal controls, operations, and personnel policies to assure that efficient and economic administration restrains overhead costs for the benefit of its members.

(3) Each health service corporation examined, its officers, employees, and insurance producers, shall produce and make available to the commissioner or his examiners the accounts, records, documents, files, information, assets, and matters in its possession or control relating to the subject of the examination.

(4) The commissioner or his examiner shall make a verified report of the examination.

(5) The report shall comprise only facts appearing from the books, papers, records, or documents of the corporation examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by those facts.

(6) The commissioner shall furnish a copy of the proposed report to the corporation examined not less than 20 days prior to its filing in his office. If the corporation requests a hearing, in writing, within the 20-day period, the commissioner shall grant one with respect to the report and shall not file the report until after the hearing and after modifications, if any, the commissioner deems proper.

(7) The health service corporation shall pay for each examination conducted pursuant to subsections (1) and (2) in accordance with 33-1-413.

History: En. 40-5912 by Sec. 12, Ch. 319, L. 1975; R.C.M. 1947, 40-5912; amd. Sec. 3, Ch. 452, L. 1981; amd. Sec. 4, Ch. 558, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Contested case administrative hearings, 2-4-102; Title 2, ch. 4, part 6.

33-30-106. Montana Administrative Procedure Act applicable. All final administrative actions or decisions of the commissioner under this chapter are subject to judicial review under and in accordance with the Montana Administrative Procedure Act.

History: En. 40-5916 by Sec. 16, Ch. 319, L. 1975; R.C.M. 1947, 40-5916.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

33-30-107. Annual statement. (1) On or before March 1 of each year, each health service corporation shall file an annual statement for the preceding year on the N.A.I.C. health blank form with the commissioner of insurance. This annual statement must be completed in accordance with the national association of insurance commissioners' annual statement instructions. The statement must be accompanied by an actuarial opinion attesting to the insurer's reserves.

(2) The health service corporation shall file a statement containing any other information concerning its financial affairs that may be reasonably requested by the commissioner.

(3) (a) Each health service corporation shall file electronic versions of its annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement electronic filing is March 1. The dates for submission of the quarterly statement electronic filing are as follows:

(i) the first quarter filing is due May 15;

(ii) the second quarter filing is due August 15; and

(iii) the third quarter filing is due November 15.

(b) The commissioner may exempt health service corporations operating only in Montana from these filing requirements.

(4) The commissioner may, after notice and hearing, suspend or revoke a health service corporation's license or impose a fine not to exceed $100 a day and not to exceed $1,000 upon a health service corporation that fails to file an annual statement as required by this part.

History: En. Sec. 1, Ch. 657, L. 1979; amd. Sec. 68, Ch. 379, L. 1995; amd. Sec. 39, Ch. 531, L. 1997; amd. Sec. 54, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) near middle of first sentence after "year on" substituted "the N.A.I.C. health blank form" for "form No. 13 N.A.I.C." and inserted third sentence requiring that an actuarial opinion accompany the statement; in (3)(a) in first sentence after "electronic" deleted "diskette", at beginning of second sentence after "The" deleted "filing" and after "statement" substituted "electronic filing" for "diskette", and at beginning of third sentence after "The" deleted "filing" and after "dates for" substituted "submission of the quarterly statement electronic filing" for "the other three quarterly statements"; and in (3)(a)(i), (3)(a)(ii), and (3)(a)(iii) after "quarter" substituted "filing" for "statement". Amendment effective October 1, 1999.

33-30-108. License required. (1) A person may not act as a health service corporation and a health service corporation may not conduct business in this state except as authorized by a license issued by the commissioner.

(2) A license may be issued by the commissioner only after the person has complied with the applicable provisions of this title.

(3) A health service corporation is entitled to a continuation of its license upon payment of the annual continuation fee specified in 33-30-204 on or before March 1 of each year and upon continued compliance with the provisions of this title.

(4) A license issued or continued under this section may be revoked or suspended by the commissioner for violation of this title.

History: En. Sec. 10, Ch. 558, L. 1987; amd. Sec. 69, Ch. 379, L. 1995.

Cross-References

Compliance with Montana Insurance Code required, 33-1-102.

General powers and duties of Commissioner, 33-1-311.

License fees, 33-30-204.

33-30-109 and 33-30-110 reserved.

33-30-111. Notice of violation — conference. If the commissioner shall for any reason have cause to believe that violation of this chapter has occurred or is threatened, the commissioner may give written notice to the health service corporation and to the representatives or other persons who appear to be involved in the suspected violation to arrange a conference with the alleged violators or their authorized representative for the purpose of attempting to ascertain the facts relating to the suspected violation, and in the event it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation.

History: En. 40-5920 by Sec. 20, Ch. 319, L. 1975; R.C.M. 1947, 40-5920; amd. Sec. 85, Ch. 370, L. 1987; amd. Sec. 8, Ch. 606, L. 1987.

33-30-112. Cease and desist order. (1) The commissioner acting in the name of the state may issue an order directing a health service corporation or a representative of a health service corporation to cease and desist from engaging in any act or practice in violation of the provisions of this chapter.

(2) Within 15 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred. These hearings shall be conducted under the Montana Administrative Procedure Act.

History: En. 40-5921 by Sec. 21, Ch. 319, L. 1975; R.C.M. 1947, 40-5921; amd. Sec. 86, Ch. 370, L. 1987; amd. Sec. 9, Ch. 606, L. 1987.

Cross-References

Contested case administrative proceedings, Title 2, ch. 4, part 6.

33-30-113. Injunctive relief. In the case of any violation of the provisions of this chapter if the commissioner elects not to issue a cease and desist order or in the event of noncompliance with a cease and desist order issued under this chapter, the commissioner may institute a proceeding to obtain injunctive relief, receivership, or other appropriate relief in the district court of the county in which the violation occurs or in which the principal place of business of the health service corporation is located. Any proceeding under this section shall conform to the requirements of Title 27, chapter 19 or 20, except that the commissioner shall not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss.

History: En. 40-5922 by Sec. 22, Ch. 319, L. 1975; R.C.M. 1947, 40-5922; amd. Sec. 87, Ch. 370, L. 1987; amd. Sec. 10, Ch. 606, L. 1987.

Cross-References

Legal actions by state agencies — Attorney General to be notified, 25-1-501.

Injunctions, Title 27, ch. 19.

Receivers, Title 27, ch. 20.

Part 2

Finance

33-30-201. Reserves — requirements suspended. (1) The corporation shall maintain at all times unobligated funds adequate to:

(a) provide the hospital, medical-surgical, and other health services made available to its members and beneficiaries; and

(b) meet all costs and expenses.

(2) In addition, reserves of a health service corporation in cash, certificates of deposit, obligations issued or guaranteed by the government of the United States, or other assets approved by the commissioner must be maintained in an amount not less than:

(a) $500,000 or, if licensed under this chapter after October 1, 1999, $750,000; or

(b) an amount equal to 1 month's average income from dues or fees paid to the corporation by its members or beneficiaries, based on an average of the preceding 12 months, whichever is less.

(3) The determination of minimum reserves is subject, as to amounts payable to participating providers of the health services, to any right of the corporation to prorate the amounts under the terms of its health service contracts with providers.

(4) The commissioner may decrease or suspend the requirements of this section if the commissioner finds that the action is in the best interest of the members of the corporation.

History: En. 40-5905 by Sec. 5, Ch. 319, L. 1975; R.C.M. 1947, 40-5905; amd. Sec. 55, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (2)(a) after "$500,000 or" inserted "if licensed under this chapter after October 1, 1999, $750,000"; deleted former (3) that read: "(3) If the reserves are not equal to the average in subsection (2)(b), they must have been increased during the preceding 12 months by an amount equal to 1% of the gross dues or fee income during that period"; and made minor changes in style. Amendment effective October 1, 1999.

33-30-202. Annual report by certified public accountant. (1) All corporations subject to the provisions of this chapter shall file annually with the commissioner, on or before June 1, a financial statement audited by a certified public accountant pursuant to rules promulgated by the commissioner.

(2) (a) The commissioner may establish rules governing the content and preparation of the report required by subsection (1).

(b) The report must include:

(i) the corporation's financial statements for the most recent calendar year;

(ii) an opinion by the certified public accountant concerning the accuracy and fairness of the corporation's representation of its financial statements; and

(iii) other information that the commissioner specifies by rule.

History: En. 40-5911 by Sec. 11, Ch. 319, L. 1975; R.C.M. 1947, 40-5911; amd. Sec. 70, Ch. 379, L. 1995.

33-30-203. Premium tax exemption. A health service corporation is exempt from all premium taxes.

History: En. 40-5915 by Sec. 15, Ch. 319, L. 1975; R.C.M. 1947, 40-5915.

Cross-References

Premium taxes, 33-2-705.

33-30-204. Fees. (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

(a) filing any statement or report $1

(b) for a certified copy of any document or other paper filed in the office of the commissioner, per page ..... $.50

(c) for a certificate with affixed seal $10

(d) filing of a membership contract $25

(e) filing of a membership contract package $100

(f) filing annual statement $25

(g) issuance of health service corporation license $300

(h) annual continuation of health service corporation license $300

(2) The commissioner shall promptly deposit with the state treasurer, to the credit of the general fund, all fees and license fees received under this section.

History: **En. 40-5917 by Sec. 17, Ch. 319, L. 1975; R.C.M. 1947, 40-5917; amd. Sec. 1, Ch. 452, L. 1981; amd. Sec. 5, Ch. 558, L. 1987; amd. Sec. 7, Ch. 351, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 71, Ch. 379, L. 1995.**

Cross-References

License required of health service corporations, 33-30-108.

Part 3
Operations

33-30-301. Forms — filing, approval. A copy of all forms of the membership contract or any type of endorsement or rider shall be filed with and approved by the commissioner of this state and the insurance regulator of the state of domicile of the health service corporation in accordance with chapter 1, part 5.

History: **En. 40-5906 by Sec. 6, Ch. 319, L. 1975; R.C.M. 1947, 40-5906; amd. Sec. 2, Ch. 452, L. 1981; amd. Sec. 6, Ch. 558, L. 1987.**

Cross-References

Contested case administrative hearings, Title 2, ch. 4, part 6.

Initiating judicial review of administrative proceeding, 2-4-702.

Stays of agency opinions — appeals, 2-4-711.

33-30-302. Allowed contracts. (1) A corporation subject to the provisions of this chapter may enter into contracts for the rendering of health services on behalf of its members or beneficiaries with:

(a) hospitals maintained by a governmental body or agency;

(b) hospitals maintained by a nonprofit corporation organized for hospital purposes; or

(c) other corporations, organizations, associations, partnerships, or individuals furnishing health services.

(2) A health service corporation may enter into agreements or contracts with other organizations or corporations licensed to do business in this state or in any other state for:

(a) the transfer of members or beneficiaries;

(b) the reciprocal joint provisions of benefits to the members or beneficiaries of the corporation and of those other organizations or corporations; or

(c) other joint undertakings the corporation's board of directors approves.

History: **En. 40-5907 by Sec. 7, Ch. 319, L. 1975; R.C.M. 1947, 40-5907.**

33-30-303. Grievance procedure for members. Any individual member of a corporation, subject to the provisions of this chapter, who believes himself to be aggrieved by any act or omission of the corporation or its officers, directors, or employees may file a statement in writing of his grievance in the office of the commissioner, and the commissioner may investigate the grievance. No investigation by the commissioner shall act as a bar to any suit in a court of competent jurisdiction instituted by an aggrieved member or as a bar to any defense by the involved corporation.

History: **En. 40-5913 by Sec. 13, Ch. 319, L. 1975; R.C.M. 1947, 40-5913.**

33-30-304. Nonliability for injuries caused by contractees. A health service corporation is not liable for injuries resulting from neglect, misfeasance, malfeasance, or malpractice on the part of any person, organization, agency, or corporation rendering health services to the health service corporation's members and beneficiaries.

History: **En. 40-5914 by Sec. 14, Ch. 319, L. 1975; R.C.M. 1947, 40-5914.**

33-30-305 . Prohibited trade practices. In order to regulate trade practices of health service corporations the following practices are prohibited:

(1) No person may make, issue, circulate, or cause to be made, issued, or circulated any estimate, circular, or statement misrepresenting:

(a) the terms of any health service corporation membership contract issued or to be issued; or

(b) the benefits or advantages promised thereby.

(2) No person may make any misleading representation or any misrepresentation as to the financial condition of any health service corporation.

(3) No person may make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of a health service corporation which is untrue, deceptive, or misleading.

(4) No person may make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any health service corporation membership contract for the purpose of inducing or attempting or tending to induce a member to cancel or convert any membership contract.

(5) No person may file with any public official or make, publish, disseminate, circulate, or deliver to any person or place before the public or cause directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of a health service corporation with intent to deceive.

(6) No person may make any false entry in any book, report, or statement of any health service corporation with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom that health service corporation is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of that health service corporation in any book, report, or statement of the health service corporation.

(7) No person may make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of a health service corporation or of an organization proposing to become a health service corporation and which is calculated to injure any person engaged or proposing to engage in the business of operating a health service corporation.

(8) No person may enter into agreement to commit or by any concerted action commit any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of the operation of health service corporations.

History: En. 40-5918 by Sec. 18, Ch. 319, L. 1975; R.C.M. 1947, 40-5918(intro.), (1) thru (7).

Cross-References

Civil libel actions, 27-1-802.

Unsworn falsification to authorities — crime, 45-7-203.

Criminal defamation, 45-8-212.

33-30-306. Discrimination between individuals — restrictions — ratesetting by commissioner prohibited. (1) No person may knowingly make or permit any unreasonable discrimination between individuals in any classification which may be established by a health service corporation and of essentially the same condition of health in the amount of dues or rates charged for any membership contract or in the benefits payable thereunder or in any of the terms and conditions of such contract or in any manner whatever.

(2) Nothing herein contained shall, however, restrict the right of a health service corporation within the discretion of its board of directors to limit or define the classes of persons who shall be eligible to become members, to limit and to define the benefits which it will furnish, and define such benefits as it undertakes to furnish into classes or kinds. A health service corporation may make available to its members health services, or reimbursement therefor, as the board of directors of that corporation may approve.

(3) Nothing contained in subsection (1) includes within the definition of discrimination any of the following practices:

(a) readjustment of the rate of payment for membership in a health service corporation under a group contract based on the loss or expense experience thereunder at the end of the first or any subsequent contract year thereunder which may be made retroactive only for that contract year;

(b) in the case of membership contracts issued on the preauthorized bank draft or similar plans, making allowance to members in an amount which fairly represents the saving in collection expense;

(c) reduction of the rate of payment for group contracts covering a large number of members, but not exceeding savings in administrative expenses reasonably attributable to these contracts as compared with contracts offering similar benefits to smaller numbers of members;

(d) issuing individual membership contracts on a "salary savings" or payroll deduction plan reasonably commensurate with the savings made by use of such plan.

(4) Nothing in this chapter gives the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. 40-5918, 40-5919 by Secs. 18, 19, Ch. 319, L. 1975; R.C.M. 1947, 40-5918(8), 40-5919.

33-30-307. Notice of rate increases. (1) A health service corporation must inform members covered under individual plans of any rate increase at least 45 days prior to such increase.

(2) The premium rate for an individual policy converted from a group plan in accordance with 33-30-1007(3) may not be increased during the first 6 months of coverage of the individual policy.

History: En. Sec. 2, Ch. 309, L. 1983; amd. Sec. 7, Ch. 558, L. 1987.

33-30-308 through 33-30-310 reserved.

33-30-311. Insurance producer. A person who, for compensation, solicits membership in a prepayment health service plan offered by a corporation subject to the provisions of this chapter is an insurance producer of that corporation and is subject to the provisions of 33-2-708 and Title 33, chapter 17.

History: En. 40-5908 by Sec. 8, Ch. 319, L. 1975; R.C.M. 1947, 40-5908; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 72, Ch. 379, L. 1995.

33-30-312. Repealed. Sec. 97, Ch. 379, L. 1995.

History: En. 40-5909 by Sec. 9, Ch. 319, L. 1975; R.C.M. 1947, 40-5909; amd. Sec. 8, Ch. 558, L. 1987; amd. Sec. 8, Ch. 509, L. 1989; amd. Sec. 1, Ch. 713, L. 1989.

33-30-313. Repealed. Sec. 97, Ch. 379, L. 1995.

History: En. 40-5910 by Sec. 10, Ch. 319, L. 1975; R.C.M. 1947, 40-5910; amd. Sec. 1, Ch. 713, L. 1989.

Parts 4 through 9 reserved

Part 10

Health Service Corporation Plans

33-30-1001. Newborn infants covered by insurance by health service corporation. A disability insurance plan or group disability insurance plan issued by a health service corporation may not be issued or amended in this state if it contains any disclaimer, waiver, preexisting condition exclusion, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each policy must contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person. The policy or contract may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days.

History: En. Sec. 5, Ch. 74, L. 1973; R.C.M. 1947, 15-2304.1; amd. Sec. 28, Ch. 303, L. 1981; amd. Sec. 73, Ch. 379, L. 1995; amd. Sec. 28, Ch. 416, L. 1997.

Cross-References

Child support enforced by Department of Public Health and Human Services — insurance coverage required, 40-5-208.

33-30-1002. Disability coverage of services received in state institutions — coverage of persons eligible for public medical assistance. (1) From and after February 14, 1973, it shall be unlawful for any health service corporation issuing membership contracts in Montana to exclude from coverage in a membership contract services rendered the insured while a resident in a Montana state institution, provided the services to the insured would be covered by the membership contract if rendered to him outside a Montana state institution.

(2) A membership contract is considered issued in Montana if the insured purchasing the membership contract is, at the time of such purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section should appear in a membership contract issued in Montana after February 14, 1973, the provision is void and the membership contract will be considered to cover services rendered the insured in a Montana state institution if the services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of the membership contract, which would be paid for the services if rendered outside a Montana state institution.

(5) No membership contract issued by a health service corporation on or after July 1, 1979, may deny or reduce benefits to any member on the ground that the person insured is eligible for or receiving public medical assistance provided under Title 53, chapter 2.

History: En. Secs. 1, 2, 3, 4, Ch. 50, L. 1973; R.C.M. 1947, 40-4035(part), 40-4036, 40-4037, 40-4038; amd. Sec. 3, Ch. 169, L. 1979.

Cross-References

State institutions — Department of Public Health and Human Services, 53-1-602.

33-30-1003. Continuation of coverage for persons with disabilities — individual contracts. (1) An individual hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified in the contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical disability and chiefly dependent upon the subscriber for support and maintenance. Proof of retardation or the disability and dependency must be furnished to the hospital or medical service plan corporation by the subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts.

History: (1)En. 40-3738 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3738, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3738(part), 40-3740; amd. Sec. 24, Ch. 472, L. 1997.

33-30-1004. Continuation of coverage for persons with disabilities — group contracts. (1) A group hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical disability and chiefly dependent upon the employee or member for support and maintenance. Proof of the retardation or disability and dependency must be furnished to the hospital or medical service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts.

History: (1)En. 40-3739 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3739, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3739(part), 40-3740; amd. Sec. 25, Ch. 472, L. 1997.

33-30-1005. Right of rescission. Each membership contract, other than a group contract, issued for delivery in this state on or after January 1, 1980, shall contain a notice stating in substance that if the person to whom the contract is issued is not satisfied for any reason, he is permitted to return the contract within 10 days of its delivery, or such longer period as the contract may provide, and to have refunded the amount of the premium paid. A contract returned pursuant to this section is void from the beginning.

History: En. Sec. 2, Ch. 342, L. 1979.

Cross-References

Rescission, 28-2-1711 through 28-2-1716.

33-30-1006. Continuing group coverage after termination. A person covered by a group hospital or medical service plan contract, issued or renewed by a health service corporation after October 1, 1981, may, for a period of 1 year with the consent of the employer or the trustees, continue coverage under the group contract during his employment notwithstanding any reduction of his regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged him shall be equal to that charged the members of the group.

History: En. Sec. 5, Ch. 579, L. 1981.

33-30-1007. Conversion on termination of eligibility. (1) The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, must contain a provision that if the insurance or any portion of it on a person or a person's dependents or family members covered under the policy ceases because of termination of the person's employment or of a person's membership in the class or classes eligible for coverage under the policy as a result of an employer discontinuing the employer's business or as a result of an employer discontinuing the policy issued by the health service corporation and not providing for any other group disability insurance or plan, a person must, if the person has been insured for a period of 3 months and if the person is not insured under another major medical disability insurance policy or plan, be entitled to have issued to the person by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on the person or the person's dependents or family members. Application for the individual policy must be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy must, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those whose eligibility is determined by their affiliation other than by employment with a particular entity. In addition, the health service corporation shall make available a conversion policy as required by subsection (4).

(3) The premium on the individual policy must be at no more than 200% of the insurer's then customary rate applicable to the coverage of the individual policy. If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate. The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(4) The health service corporation shall make available an individual conversion policy that provides the level of benefits provided by its lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under chapter 22, part 18, the insurer shall make available an individual conversion policy that provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan.

History: En. Sec. 6, Ch. 579, L. 1981; amd. Sec. 1, Ch. 309, L. 1983; amd. Sec. 9, Ch. 558, L. 1987; amd. Sec. 2, Ch. 200, L. 1991; amd. Sec. 12, Ch. 527, L. 1995; amd. Sec. 2, Ch. 228, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 228 inserted second sentence in (3) prohibiting premium in excess of 150% of customary rate if person entitled to conversion has been insured for more than 3 years; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 3, Ch. 228, L. 1999, provided: "[This act] applies to a policy, certificate, or contract of disability insurance and a health service membership contract entered into or renewed on or after January 1, 2000."

33-30-1008. Preexisting conditions. The converted policy may not exclude, as a preexisting condition, any conditions covered by the group contract.

History: En. Sec. 7, Ch. 579, L. 1981.

33-30-1009. Insured's family — conversion entitlement. Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death, otherwise to each surviving child whose

coverage under the group policy terminates by reason of such death, or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of such continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group policy, including such children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to himself upon termination of his coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

History: En. Sec. 8, Ch. 579, L. 1981.

33-30-1010. Renumbered 33-30-1021 by Code Commissioner, 1983.

33-30-1011. Dentists performing services common to both medicine and dentistry. A contract or plan may exclude coverage for dental care or services, but no individual or group membership contract or plan issued or renewed on or after October 1, 1983, may disallow payment to a dentist for health care or services for which a physician would be paid, provided the dentist is licensed under the law of this state to perform such care or service.

History: En. Sec. 1, Ch. 471, L. 1983.

33-30-1012. Repealed. Sec. 4, Ch. 606, L. 1987.

History: En. Sec. 15, Ch. 572, L. 1985.

33-30-1013. Coverage required for services provided by nurse specialists. A health service corporation shall provide, in group and individual insurance contracts, coverage for health services provided by a nurse specialist, as specifically listed in 37-8-202(5), if health care services that nurse specialists are licensed to perform are covered by the contract.

History: En. Sec. 2, Ch. 329, L. 1987.

33-30-1014. Coverage for well-child care. (1) Each disability insurance plan or group disability insurance plan that is delivered, issued for delivery, renewed, extended, or modified in this state by a health service corporation and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the plan.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered at the intervals required in that subsection by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a disability insurance plan or group disability insurance plan issued by a health service corporation provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the health service corporation that issued or delivered the policy or certificate is located inside or outside of this state.

History: En. Sec. 3, Ch. 199, L. 1991.

33-30-1015. Limitation of eligibility on conversion. A person who purchases a policy of insurance under 33-30-1007 ceases to be eligible for a conversion policy if the person insured by the policy:

(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395;

(2) fails to pay the premium on the policy purchased under 33-30-1007;

(3) enrolls under another major medical disability insurance policy or plan, except that the person may maintain the conversion policy during any waiting period established under any new disability insurance policy or plan that the insured person purchases.

History: En. Sec. 4, Ch. 200, L. 1991.

33-30-1016. Coverage for adopted children from time of placement — preexisting conditions. (1) Each individual or group membership contract issued or amended by a health service corporation in this state that provides coverage of dependent children of a member must provide coverage for an adopted child of the member to the same extent as for natural children of the member.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" has the meaning as defined in 33-22-130.

History: En. Sec. 2, Ch. 387, L. 1991; amd. Sec. 162, Ch. 480, L. 1997.

33-30-1017. *(Effective January 1, 2000)* **Coverage required for services provided by naturopathic physicians.** A health service corporation shall provide, in group and individual insurance contracts or certificates, coverage for health services provided by a naturopathic physician licensed pursuant to Title 37, chapter 26, if the health care services that naturopathic physicians are licensed to perform are covered by the contract or certificate.

History: En. Sec. 2, Ch. 459, L. 1999.

Compiler's Comments

Effective Date: Section 4, Ch. 459, L. 1999, provided that this section is effective January 1, 2000.

33-30-1018 through 33-30-1020 reserved.

33-30-1021. Applicability. Notwithstanding any provision of Title 33 or other law to the contrary, it shall be lawful for an insurer and insured to agree to any terms in an insurance contract that provides more favorable terms for the benefit of the insured than authorized in Title 33 or other provisions of law.

History: En. Sec. 9, Ch. 579, L. 1981; MCA 1981, 33-30-1010; redes. 33-30-1021 by Code Commissioner, 1983.

Part 11

Subrogation — Notice

Part Cross-References

State employee group insurance — subrogation — notice, Title 2, ch. 18, part 9.

Disability insurance — subrogation — notice, Title 33, ch. 22, part 16.

33-30-1101. Subrogation rights. A hospital or medical service plan contract issued by a health service corporation may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the health service corporation is entitled to subrogation, as provided for in 33-30-1102, against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

History: En. Sec. 2, Ch. 365, L. 1987.

33-30-1102. Notice — shared costs of third-party action — limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the health service corporation reasonable notice of his intention to institute the action.

(2) The insured may request that the health service corporation pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) A health service corporation may elect not to participate in the cost of the action. If such an election is made, the health service corporation waives 50% of any subrogation rights granted to it by 33-30-1101.

(4) The health service corporation's right of subrogation granted in 33-30-1101 may not be enforced until the injured insured has been fully compensated for his injuries.

History: En. Sec. 4, Ch. 365, L. 1987.

CHAPTER 31

HEALTH MAINTENANCE ORGANIZATIONS

Part 1 — General Provisions

33-31-101. Short title.
33-31-102. Definitions.
33-31-103. Rules.
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33-31-105 through 33-31-110 reserved.
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Part 1
General Provisions

33-31-101. Short title. This chapter may be cited as the "Montana Health Maintenance Organization Act".

History: En. Sec. 1, Ch. 457, L. 1987.

33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132; and

(j) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(5) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(6) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(7) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(8) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(9) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(10) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(11) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(12) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

(13) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered

nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(14) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

(15) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

(16) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent.

History: **En. Sec. 2, Ch. 457, L. 1987; amd. Sec. 3, Ch. 34, L. 1989; amd. Sec. 2, Ch. 80, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 1, Ch. 437, L. 1991; amd. Sec. 2, Ch. 663, L. 1991; amd. Sec. 1, Ch. 165, L. 1997; amd. Sec. 3, Ch. 413, L. 1997; amd. Sec. 29, Ch. 416, L. 1997; amd. Sec. 3, Ch. 434, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 434 in definition of basic health care services substituted (j) concerning treatment and medical foods for inborn errors of metabolism for "treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status." Amendment effective January 1, 2000.

Effective Date — Applicability: Section 6, Ch. 434, L. 1999, provided that this section is effective January 1, 2000, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

Cross-References

Disability insurance — coverage for phenylketonuria treatment, 33-22-131.

33-31-103. Rules. The commissioner may, after notice and hearing, make reasonable rules necessary to effectuate this chapter.

History: **En. Sec. 20, Ch. 457, L. 1987; amd. Sec. 2, Ch. 437, L. 1991.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

33-31-104. Repealed. Sec. 10, Ch. 437, L. 1991.

History: **En. Sec. 27, Ch. 457, L. 1987.**

33-31-105 through 33-31-110 reserved.

33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Chapter 1, parts 12 and 13, of this title, 33-3-431, 33-15-308, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-246, 33-22-247, 33-22-514, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations.

History: En. Sec. 24, Ch. 457, L. 1987; amd. Sec. 74, Ch. 379, L. 1995; amd. Sec. 10, Ch. 198, L. 1997; amd. Sec. 6, Ch. 410, L. 1997; amd. Sec. 4, Ch. 413, L. 1997; amd. Sec. 30, Ch. 416, L. 1997; amd. Sec. 1, Ch. 527, L. 1997; amd. Sec. 40, Ch. 531, L. 1997; amd. Sec. 3, Ch. 178, L. 1999; amd. Sec. 2, Ch. 334, L. 1999; amd. Sec. 5, Ch. 348, L. 1999; amd. Sec. 4, Ch. 434, L. 1999; amd. Sec. 56, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 178 in (7) inserted "33-22-136". Amendment effective March 25, 1999.

Chapter 334 inserted (6)(e) adding that a health maintenance organization is not exempt from the provisions of Title 33, chapter 18, part 9; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 348 in (7) inserted "33-22-706"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 434 in (7) inserted "33-22-131". Amendment effective January 1, 2000.

Chapter 472 in (7) at beginning substituted "Chapter 1, parts 12 and 13, of this title, 33-3-431, 33-15-308" for "Sections". Amendment effective October 1, 1999.

Effective Date — Applicability: Section 9, Ch. 348, L. 1999, provided: "[This act] is effective January 1, 2000, for all policies or certificates issued or renewed on or after that date."

Section 6, Ch. 434, L. 1999, provided that this section is effective January 1, 2000, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

33-31-112. Filings and reports as public documents. All applications, filings, and reports required under this chapter, except those that contain trade secrets or privileged or confidential commercial or financial information (other than an annual financial statement that the commissioner may require under 33-31-211), are public documents.

History: En. Sec. 25, Ch. 457, L. 1987.

33-31-113. Confidentiality of medical information. (1) Any data or information pertaining to the diagnosis, treatment, or health of an enrollee or applicant obtained from the enrollee, applicant, or a provider by a health maintenance organization must be held in confidence and may not be disclosed to any person except:

(a) to the extent that it may be necessary to carry out the purposes of this chapter;

(b) upon the express consent of the enrollee or applicant;

(c) pursuant to statute or court order for the production of evidence or the discovery thereof; or

(d) in the event of claim or litigation between the enrollee or applicant and the health maintenance organization wherein the data or information is pertinent.

(2) A health maintenance organization is entitled to claim the same statutory privileges against disclosure that the provider who furnished the information to the health maintenance organization is entitled to claim.

History: **En. Sec. 26, Ch. 457, L. 1987.**

33-31-114. Coverage for adopted children from time of placement — preexisting conditions. (1) Each health maintenance contract regulated under this chapter must provide coverage for an adopted child of the enrollee to the same extent as for natural children of the enrollee.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" has the meaning as defined in 33-22-130.

History: **En. Sec. 3, Ch. 387, L. 1991; amd. Sec. 163, Ch. 480, L. 1997.**

33-31-115. Applicability to managed health care entity. (1) A managed health care entity, as defined in 53-6-702, is governed by the provisions of Title 53, chapter 6, part 7, and by the licensure and financial solvency provisions of this chapter, but the commissioner may by rule reduce or eliminate a requirement of this chapter if the requirement is demonstrated to be unnecessary for the operation of a managed health care entity.

(2) The department of public health and human services may limit the amount, scope, and duration of services provided by a managed health care entity under contract for programs established under Title 53. These services may be less than services required by this title.

History: **En. Sec. 10, Ch. 502, L. 1995; amd. Sec. 2, Ch. 577, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 577 in (1) at beginning and at end substituted "managed health care entity" for "managed care community network" and near middle before "this chapter" inserted "the licensure and financial solvency provisions of"; and inserted (2) allowing limitation of services. Amendment effective May 6, 1999.

Part 2

Authorization of Health Maintenance Organizations

33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under 35-1-1028.

(2) Each health maintenance organization operating in this state as of October 1, 1987, shall submit an application for a certificate of authority under subsection (3) within 30 days after the effective date of rules adopted by the commissioner as provided in 33-31-103. Each such applicant may continue to operate in this state until the commissioner acts upon the application. If an application is denied under 33-31-202, the applicant must be treated as a health maintenance organization whose certificate of authority has been revoked.

(3) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States (if a foreign person);

(iii) the date of organization or incorporation;

(iv) the form of organization (including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors);

(v) the state or country of domicile; and

(vi) any additional information the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody thereof;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation; and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (3)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, his successors in office, and his authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2); however, nothing in this subsection deprives the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(4) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (3) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may make reasonable rules exempting from the filing requirements of this subsection those items he considers unnecessary.

(5) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications thereto. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(6) Each health maintenance organization shall maintain, at its administrative office, and make available to the commissioner upon request executed copies of all provider contracts.

(7) The commissioner may make reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

History: En. Sec. 3, Ch. 457, L. 1987; amd. Sec. 192, Ch. 368, L. 1991; amd. Sec. 3, Ch. 437, L. 1991.

33-31-202. Issuance of certificate of authority. (1) The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to 33-31-201 within 180 days after receipt of the application. The commissioner shall grant a certificate of authority upon payment of the application fee prescribed in 33-31-212 if the commissioner is satisfied that each of the following conditions is met:

(a) The persons responsible for the conduct of the applicant's affairs are competent and trustworthy.

(b) The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments. This requirement does not apply to the physical or mental health care services provided by a health maintenance organization to a person receiving medicaid services under the Montana medicaid program as established in Title 53, chapter 6.

(c) The health maintenance organization is financially responsible and can reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

(i) the financial soundness of the arrangements for health care services and the schedule of charges used in connection with the services;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, a health service corporation, a government, or any other organization for ensuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization;

(iv) any agreement with providers for the provision of health care services;

(v) any deposit of cash or securities submitted in accordance with 33-31-216; and

(vi) any additional information that the commissioner may reasonably require.

(d) The enrollees must be afforded an opportunity to participate in matters of policy and operation pursuant to 33-31-222.

(e) Nothing in the proposed method of operation, as shown by the information submitted pursuant to 33-31-201 or by independent investigation, violates any provision of this chapter or rules adopted by the commissioner.

(2) The commissioner may deny a certificate of authority only if the requirements of 33-31-404 are complied with.

(3) The commissioner shall examine each health maintenance organization applying for an initial certificate of authority to do business in this state. In lieu of making an examination under this part of any health maintenance organization domiciled in another state, the commissioner may accept an examination report on the organization prepared by the insurance department of the organization's state of domicile.

History: En. Sec. 4, Ch. 457, L. 1987; amd. Sec. 4, Ch. 437, L. 1991; amd. Sec. 2, Ch. 590, L. 1995; amd. Sec. 57, Ch. 472, L. 1999; amd. Sec. 3, Ch. 577, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 472 inserted (3) requiring examination of each health maintenance organization applying for initial authority to do business. Amendment effective October 1, 1999.

Chapter 577 in (1)(b) near beginning of second sentence after "apply to the" inserted "physical or mental". Amendment effective May 6, 1999.

33-31-203. Powers of insurers and health service corporations. (1) An insurer authorized to transact insurance in this state or a health service corporation authorized to do business in this state may, either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization under the provisions of this chapter. Notwithstanding any other law which may be inconsistent with this section, two or more insurers, health service corporations, or subsidiaries or affiliates thereof may jointly organize and operate a health maintenance organization. The business of insurance is considered to include the provision of health care services by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

(2) Notwithstanding any insurance or health service corporation laws, an insurer or a health service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through a health maintenance organization and to provide coverage if the health maintenance organization fails to meet its obligations.

(3) The enrollees of a health maintenance organization constitute a permissible group under this title. The insurer or health service corporation may make benefit payments to health maintenance organizations for health care services rendered by providers under the contracts described in subsection (2).

(4) Nothing in this section exempts a health maintenance organization that provides health care services from complying with the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

History: En. Sec. 16, Ch. 457, L. 1987.

33-31-204. Acquisition, control, or merger of a health maintenance organization. (1) Except as provided in 33-2-1106 and subsection (2), no person may tender for, request, or invite tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the health maintenance organization.

(2) No person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the acquiring person has filed with the commissioner and has sent to the health maintenance organization information required by 33-2-1104(2) and the commissioner has approved the offer, request, invitation, agreement, or acquisition pursuant to 33-2-1105.

History: En. Sec. 28, Ch. 457, L. 1987.

33-31-205 through 33-31-210 reserved.

33-31-211. Annual statements — revocation for failure to file — penalty for false swearing. (1) Unless it is operated by an insurer or a health service corporation as a plan, each authorized health maintenance organization shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and content required by the commissioner and must be completed in accordance with the national association of insurance commissioners' annual statement instructions. The statement must be verified by the oath of at least two principal officers of the health maintenance organization. The commissioner may waive any verification under oath. In addition, a health maintenance organization shall, unless it is operated by an insurer or a health service corporation as a plan, annually file on or before June 1 an audited financial statement. A health maintenance organization's audited financial statement must comply with rules adopted by the commissioner concerning audited financial statements.

(2) At the time of filing the annual statement required by March 1, the health maintenance organization shall pay the commissioner the fee for filing the statement as prescribed in 33-31-212. The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-31-212, may impose a penalty of $100, or may suspend or revoke the certificate of authority of a health maintenance organization that fails to file an annual statement when due. Each day that the insurer fails to file its annual statement constitutes a separate violation. The total penalty may not exceed $1,000.

(3) The commissioner may, after notice and hearing, impose a fine not to exceed $5,000 for each violation upon a director, officer, partner, member, insurance producer, or employee of a health maintenance organization who knowingly subscribes to or concurs in making or publishing an annual statement required by law that contains a material statement that is false.

(4) The commissioner may require reports considered reasonably necessary and appropriate to enable the commissioner to carry out the duties required of the commissioner under this chapter, including but not limited to a statement of operations, transactions, and affairs of a health maintenance organization operated by an insurer or a health service corporation as a plan.

History: En. Sec. 9, Ch. 457, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 5, Ch. 413, L. 1997; amd. Sec. 41, Ch. 531, L. 1997; amd. Sec. 58, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (1) at end of second sentence inserted "and must be completed in accordance with the national association of insurance commissioners' annual statement instructions" and inserted sixth sentence requiring that the audited financial statement comply with rules concerning audited statements. Amendment effective October 1, 1999.

33-31-212. Fees. (1) Each health maintenance organization shall pay to the commissioner the following fees:

(a) for filing an application for a certificate of authority or amendment thereto, $300;

(b) for filing an amendment to the organization documents that requires approval, $25;

(c) for filing each annual statement, $25;

(d) for annual continuation of certificate of authority, $300.

(2) All fees, miscellaneous charges, fines, penalties, and those amounts received pursuant to 33-31-211(3) and 33-31-405 collected by the commissioner pursuant to this chapter and the rules adopted thereunder must be deposited in the general fund.

History: En. Sec. 22, Ch. 457, L. 1987; amd. Sec. 8, Ch. 351, L. 1989; amd. Sec. 6, Ch. 628, L. 1989; amd. Sec. 5, Ch. 437, L. 1991.

33-31-213 and 33-31-214 reserved.

33-31-215. Investment regulations. Except for a health maintenance organization operated as a plan by a health service corporation, a domestic health maintenance organization may invest its funds only as prescribed in chapter 12.

History: En. Sec. 12, Ch. 457, L. 1987; amd. Sec. 49, Ch. 304, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 304 substituted reference to chapter 12 for reference to chapter 2, part 8. Amendment effective July 1, 1999.

33-31-216. Protection against insolvency. (1) Except as provided in subsections (4) through (7), each authorized health maintenance organization shall deposit with the commissioner cash, securities, or any combination of cash or securities acceptable to the commissioner in the amount set forth in this section.

(2) The amount of the deposit for a health maintenance organization during the first year of its operation is $200,000.

(3) At the beginning of each succeeding year, unless not applicable, the health maintenance organization shall deposit with the commissioner cash, securities, or any combination of cash or securities acceptable to the commissioner, in an amount equal to 4% of its estimated annual uncovered expenditures for that year.

(4) Unless not applicable, a health maintenance organization that is in operation on October 1, 1987, shall make a deposit equal to the greater of:

(a) 1% of the preceding 12 months' uncovered expenditures; or

(b) 4% of its estimated annual uncovered expenditures for each year.

(5) The commissioner may waive any of the deposit requirements set forth in subsections (1) through (4) whenever the commissioner is satisfied that:

(a) the health maintenance organization has sufficient net worth and an adequate history of generating net income to ensure its financial viability for the next year;

(b) the health maintenance organization's performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income; or

(c) the health maintenance organization's assets or its contracts with insurers, health service corporations, governments, or other organizations are reasonably sufficient to ensure the performance of its obligations.

(6) When a health maintenance organization achieves a net worth not including land, buildings, and equipment of at least $1 million or achieves a net worth including organization-related land, buildings, and equipment of at least $5 million, the annual deposit requirement under subsection (3) does not apply. The annual deposit requirement under subsection (3) does not apply to a health maintenance organization if the total amount of the accumulated deposit is greater than the capital requirement for the formation or admittance of a disability insurer in this state. If the health maintenance organization has a guaranteeing organization that has been in operation for at least 5 years and has a net worth not including land, buildings, and equipment of at least $1 million or that has been in operation for at least 10 years and has a net worth including organization-related land, buildings, and equipment of at least $5 million, the annual deposit requirement under subsection (3) does not apply. If the guaranteeing organization is sponsoring more than one health maintenance organization, however, the net worth requirement is increased by a multiple equal to the number of those health maintenance organizations. This requirement to maintain a deposit in excess of the deposit required of a disability insurer does not apply during any time that the guaranteeing organization maintains for each health maintenance organization it

sponsors a net worth at least equal to the capital and surplus requirements for a disability insurer.

(7) All income from deposits belongs to the depositing health maintenance organization and must be paid to it as it becomes available. A health maintenance organization that has made a securities deposit may withdraw the deposit or any part of it after making a substitute deposit of cash, securities, or any combination of cash or securities of equal amount and value. A health maintenance organization may not substitute securities without prior approval by the commissioner.

(8) In any year in which an annual deposit is not required of a health maintenance organization, at the health maintenance organization's request, the commissioner shall reduce the previously accumulated deposit by $100,000 for each $250,000 of net worth in excess of the amount that allows the health maintenance organization to be exempt from the annual deposit requirement. If the amount of net worth no longer supports a reduction of its required deposit, the health maintenance organization shall immediately redeposit $100,000 for each $250,000 of reduction in net worth. However, the health maintenance organization's total deposit may not be required to exceed the maximum required under this section.

(9) (a) Subject to subsection (9)(b) and unless it is operated by an insurer or a health service corporation as a plan, each health maintenance organization must have a minimum capital of at least $200,000 in addition to any deposit requirements under this section. The capital account must be in excess of any accrued liabilities and be in the form of cash, securities, or any combination of cash or securities acceptable to the commissioner.

(b) A health maintenance organization licensed under this chapter after October 1, 1999, must have a minimum capital of at least $750,000. The amount required to be deposited with the commissioner under subsection (2) must be included in the calculation of the capital needed to meet the $750,000 minimum.

(10) Each health maintenance organization shall demonstrate that if it becomes insolvent:

(a) enrollees hospitalized on the date of insolvency will be covered until discharged; and

(b) enrollees will be entitled to similar alternate insurance coverage that does not contain any medical underwriting or preexisting limitation requirements.

History: En. Sec. 13, Ch. 457, L. 1987; amd. Sec. 6, Ch. 413, L. 1997; amd. Sec. 59, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (9)(a) at beginning inserted "Subject to subsection (9)(b) and"; inserted (9)(b) requiring minimum capital of $750,000; and made minor changes in style. Amendment effective October 1, 1999.

33-31-217 through 33-31-220 reserved.

33-31-221. Powers of health maintenance organizations. (1) The powers of a health maintenance organization include but are not limited to the following:

(a) the purchase, lease, construction, renovation, operation, or maintenance of a hospital, a medical facility, or both, its ancillary equipment, and such property as may reasonably be required for its principal office or for such purposes as may be necessary in the transaction of the business of the organization;

(b) the making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation under its control for the purpose of acquiring or constructing a medical facility or hospital or in furtherance of a program providing health care services to enrollees;

(c) the furnishing of health care services through a provider who is under contract with or employed by the health maintenance organization;

(d) the contracting with a person for the performance on its behalf of certain functions, such as marketing, enrollment, and administration;

(e) the contracting with an insurer authorized to transact insurance in this state, or with a health service corporation authorized to do business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization; and

(f) the offering of other health care services in addition to basic health care services.

(2) A health maintenance organization shall file notice, with adequate supporting information, with the commissioner before exercising a power granted in subsection (1)(a), (1)(b), or (1)(d). The commissioner may, after notice and hearing, within 60 days disapprove the exercise of a power under subsection (1)(a), (1)(b), or (1)(d) only if, in his opinion, it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. The commissioner may make reasonable rules exempting from the filing requirement of this subsection those activities having a de minimis effect. The commissioner may exempt certain contracts from the filing requirement whenever exercise of the authority granted in this section would have little or no effect on the health maintenance organization's financial condition and ability to meet obligations.

(3) Nothing in this section exempts the activities of a health maintenance organization from any applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

History: En. Sec. 5, Ch. 457, L. 1987.

33-31-222. Governing body. (1) The governing body of a health maintenance organization may include providers or other individuals, or both.

(2) The governing body shall establish a mechanism to give the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms.

History: En. Sec. 6, Ch. 457, L. 1987.

33-31-223. Fiduciary responsibilities. (1) Any director, officer, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of the health maintenance organization is responsible for the funds in the manner of a fiduciary to the health maintenance organization.

(2) A health maintenance organization shall maintain in force a fidelity bond on employees and officers in an amount not less than $100,000 or such other sum as may be prescribed by the commissioner. Each bond must be written with at least a 1-year discovery period and, if written with less than a 3-year discovery period, must contain a provision that a cancellation or termination of the bond, whether by or at the request of the insured or by the underwriter, may not take effect prior to the expiration of 90 days after written notice of the cancellation or termination has been filed with the commissioner unless the commissioner approves an earlier cancellation or termination date.

History: En. Sec. 7, Ch. 457, L. 1987.

Part 3

Operations

33-31-301. Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner.

(3) An evidence of coverage issued or delivered to a person resident in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

(f) a provision providing coverage as required in 33-22-133;

(g) a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(g) do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

(h) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is amended to conform to the minimum requirements of those statutes."

(i) a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(j) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner and issued to the enrollee.

(5) (a) A health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) A health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reasons for the disapproval. The commissioner shall grant a hearing within 30 days after receipt of a written request by the filer.

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section.

History: En. Sec. 8, Ch. 457, L. 1987; amd. Sec. 3, Ch. 590, L. 1995; amd. Sec. 2, Ch. 183, L. 1997; amd. Sec. 60, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 deleted former (6) that read: "(6) A health maintenance organization may not use a schedule of charges for enrollee coverage for health care services or an amendment to a schedule of charges before it files a copy of the schedule of charges or the amendment to it with the commissioner. A health maintenance organization may evidence a subsequent amendment to a schedule of charges in a separate document issued to the enrollee. The charges in the schedule must be established in accordance with actuarial principles for various categories of enrollees, except that charges applicable to an enrollee may not be individually determined based on the status of the enrollee's health"; and made minor changes in style. Amendment effective October 1, 1999.

33-31-302. Information to enrollees. Each authorized health maintenance organization shall provide to its enrollees 30 days' advance notice in writing of any material change in the operation of the health maintenance organization that will affect them directly.

History: En. Sec. 10, Ch. 457, L. 1987.

33-31-303. Complaint system. (1) (a) Each authorized health maintenance organization shall establish and maintain a complaint system to provide reasonable procedures to resolve written complaints initiated by enrollees. A health maintenance organization may not use a complaint system:

(i) before the commissioner approves it; and

(ii) unless the health maintenance organization describes it in each evidence of coverage issued or delivered to an enrollee in this state.

(b) Each time the health maintenance organization denies a claim or initiates disenrollment, cancellation, or nonrenewal, it shall notify the affected enrollee of the right to file a complaint and the procedure for filing a complaint.

(c) Each health maintenance organization shall acknowledge a complaint within 10 days of receiving it.

(d) Each health maintenance organization shall retain records of all complaints for 3 years and shall develop a summary for each year that must include:

(i) a description of the procedures of the complaint system;

(ii) the total number of complaints handled through the complaint system, a compilation of causes underlying the complaints filed, the date on which each complaint was filed, the date on which each complaint was resolved, the disposition of each complaint filed, the time it took to process each complaint, and a summary of each administrative change made because of a complaint; and

(iii) the number, amount, and disposition of malpractice claims made by enrollees of the health maintenance organization that were settled during the year by the health maintenance organization.

(e) The health maintenance organization shall annually on or before March 1 file with the commissioner the summary described in subsection (1)(d) for the preceding year.

(2) The commissioner shall hold in confidence the information provided by the health maintenance organization pursuant to subsection (1)(d)(iii).

(3) The commissioner may examine a complaint system.

History: En. Sec. 11, Ch. 457, L. 1987.

33-31-304. Dual choice. An employer in this state that offers its employees the option to enroll in a health maintenance organization and an employee benefit fund in this state that offers its members the option to enroll in a health maintenance organization may not be required to pay more for health benefits provided by the health maintenance organization than it would otherwise be required to provide by any prevailing collective bargaining agreement or other contract for the provision of health benefits to its employees, if the employer or benefits fund pays to the health maintenance organization chosen by each employee or member an amount equal to the lesser of:

(1) the amount paid on behalf of its other employees or members of health benefits; or

(2) the health maintenance organization's charge for coverage approved by the commissioner pursuant to 33-31-301.

History: En. Sec. 29, Ch. 457, L. 1987.

33-31-305. Dentist participation as provider. A contract for dental care services through a health maintenance organization that is offered, delivered, or renewed under this chapter must allow a dentist to request participation as a provider on the same terms and conditions as those by which other dentists participate. This opportunity for participation must be offered for each contract or plan. Each contract or plan must provide at least one annual period during which a dentist may exercise this right.

History: En. Sec. 2, Ch. 265, L. 1989.

Cross-References

Disability insurance — freedom of choice in selection of practitioners, 33-22-111.

Preferred provider agreements — dental services, 33-22-1706.

33-31-306. Point-of-service option. (1) (a) A health maintenance organization that has at least 10,000 enrollees shall offer a point-of-service option benefit plan to each purchaser of a health care services agreement. The purchaser may accept or reject the addition of a point-of-service option to the health care services agreement.

(b) For the purposes of subsection (1)(a), an enrollee does not include an individual receiving medicaid services under the Montana medicaid program provided for in Title 53, chapter 6, or an individual participating in an approved medicare risk contract administered by a licensed health maintenance organization.

(2) Any difference in premium charged for the point-of-service option benefit plan compared to the premium for a standard health care services agreement may not exceed the expected cost to the insurer of benefits and expenses based on sound actuarial principles.

(3) This section may not be construed to permit a health maintenance organization to offer stand-alone indemnity insurance coverage.

History: En. Sec. 2, Ch. 165, L. 1997.

33-31-307 . Affiliation periods. (1) A health maintenance organization that offers health insurance coverage in connection with a group health plan and that does not impose a preexisting condition exclusion allowed by 33-22-246 or 33-22-514 with respect to any particular coverage option may impose an affiliation period for that coverage option if:

(a) the affiliation period is applied uniformly without regard to any health status-related factors; and

(b) the affiliation period does not exceed 2 months, or 3 months in the case of a late enrollee, as defined in 33-22-140.

(2) A health maintenance organization is not required to provide health care services or benefits during the affiliation period, and a premium may not be charged to the participant or beneficiary for any coverage during the affiliation period. An affiliation period begins on the enrollment date and runs concurrently with any waiting period under the plan.

(3) A health maintenance organization may use a method other than an affiliation period to address adverse selection if the method is approved by the commissioner.

(4) The definitions in 33-22-140 apply to this section.

History: En. Sec. 43, Ch. 416, L. 1997.

33-31-308 through 33-31-310 reserved.

33-31-311. Insurance producer license required — application, issuance, renewal, fees — penalty. (1) An individual, partnership, or corporation may not act as or represent to the public that the individual, partnership, or corporation is an insurance producer of a health maintenance organization unless the individual, partnership, or corporation is:

(a) licensed as a disability insurance producer by the commissioner pursuant to chapter 17, parts 1, 2, and 4 of this title or licensed as an insurance producer as provided in 33-30-311; and

(b) appointed or authorized by the health maintenance organization to solicit health care service agreements on its behalf.

(2) Application, appointment, and qualification for a health maintenance organization insurance producer license, fees applicable to and the issuance of a health maintenance organization insurance producer license, and renewal of a health maintenance organization insurance producer license must be in accordance with the provisions of chapter 17 that apply to a disability insurance producer.

(3) An individual, partnership, or corporation who holds a disability insurance producer license on October 1, 1987, need not requalify by an examination to be licensed as a health maintenance organization insurance producer.

(4) The commissioner may, in accordance with 33-1-313, 33-1-317, 33-17-411, and chapter 17, part 10, suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer license, or impose a fine upon the licensee.

History: En. Sec. 15, Ch. 457, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 153, Ch. 42, L. 1997.

33-31-312. Prohibited practices. (1) A health maintenance organization, or representative thereof, may not cause or knowingly permit the use of advertising that is untrue or misleading, solicitation that is untrue or misleading, or any form of evidence of coverage that is deceptive. For purposes of this chapter:

(a) a statement or item of information is considered to be misleading, whether or not it may be literally untrue, if, in the total context in which the statement is made or the item of information is communicated, a reasonable person not possessing special knowledge regarding health care coverage may reasonably understand the statement or item of information as indicating a benefit or advantage or the absence of an exclusion, limitation, or disadvantage of possible significance to an enrollee of or person considering enrollment in a health maintenance organization if the benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist; and

(b) an evidence of coverage is considered to be deceptive if, when taken as a whole and with consideration given to typography, format, and language, it can cause a reasonable person not possessing special knowledge regarding health maintenance organizations to expect benefits, services, charges, or other advantages that the evidence of coverage does not provide or which the health maintenance organization issuing the evidence of coverage does not regularly make available to enrollees covered under the evidence of coverage.

(2) Title 33, chapter 18, applies to health maintenance organizations and evidences of coverage issued by a health maintenance organization, except to the extent that the commissioner determines that the nature of health maintenance organizations and evidences of coverage render the chapter clearly inappropriate.

(3) A health maintenance organization shall clearly disclose in the evidence of coverage the circumstances under which it may disenroll, cancel, or refuse to renew an enrollee. A health maintenance organization may disenroll, cancel, or refuse to renew an enrollee only if the enrollee:

(a) has failed to pay required premiums by the end of the grace period;

(b) has committed acts of physical or verbal abuse that pose a threat to providers or other enrollees of the health maintenance organization;

(c) has allowed a nonenrollee to use the health maintenance organization's certification card to obtain services or has knowingly provided fraudulent information in applying for coverage;

(d) has moved outside of the geographical service area of the health maintenance organization;

(e) has violated rules of the health maintenance organization stated in the evidence of coverage;

(f) has violated rules adopted by the commissioner for enrollment in a health maintenance organization; or

(g) is unable to establish or maintain a satisfactory physician-patient relationship with the physician responsible for the enrollee's care. Disenrollment of an enrollee for this reason must be permitted only if the health maintenance organization can demonstrate that it provided the enrollee with the opportunity to select an alternate primary care physician, made a reasonable effort to assist the enrollee in establishing a satisfactory physician-patient relationship, and informed the enrollee that he may file a grievance on this matter.

(4) A health maintenance organization may not disenroll an enrollee under subsection (3) for reasons related to the physical or mental condition of the enrollee or for any of the following reasons:

(a) failure of the enrollee to follow a prescribed course of treatment; or

(b) administrative actions, such as failure to keep an appointment.

(5) (a) A health maintenance organization that disenrolls a group certificate holder for any reason not listed in subsection (3) or provided in rules adopted by the commissioner shall make arrangements to provide similar alternate insurance coverage to enrollees. The insurance coverage must be continued until the disenrolled group certificate holder finds its own coverage or a period of 12 months elapses, whichever comes first. The premium on the individual coverage must be at the then-customary rate applicable to the individual coverage offered by the insurer, health service corporation, or health maintenance organization that provides the alternate insurance coverage.

(b) If a health maintenance organization disenrolls an enrollee covered on an individual basis for any reason not listed in subsection (3) or provided in rules adopted by the commissioner, coverage must be continued until the anniversary date of the policy or for 1 year, whichever is earlier. A health maintenance organization that disenrolls an individual enrollee for failure to pay a required premium or for fraudulent statements on the enrollment form need not provide alternate insurance coverage to that enrollee.

(6) A health maintenance organization may not refer to itself as an insurer unless licensed as an insurer or use a name deceptively similar to the name or description of an insurer authorized to transact insurance in this state.

(7) A person may not refer to itself as a health maintenance organization or HMO unless it holds a valid certificate of authority issued by the commissioner.

History: En. Sec. 14, Ch. 457, L. 1987.

33-31-313. Premium increase restriction — exception. (1) A health maintenance organization may not increase a premium for an individual's or an individual's group health care services agreement more frequently than once during a 12-month period unless failure to increase the premium more frequently than once during the 12-month period would:

(a) place the health maintenance organization in violation of the laws of this state; or

(b) cause the financial impairment of the health maintenance organization to the extent that further transaction of insurance by the health maintenance organization would injure or be hazardous to its enrollees or to the public.

(2) Subsection (1) does not apply to a premium increase necessitated by a state or federal law, by a court decision, by a state rule, or by a federal regulation.

History: En. Sec. 7, Ch. 413, L. 1997.

33-31-314 through 33-31-320 reserved.

33-31-321. Disclosure standards — health maintenance organizations. (1) In order to provide for full and fair disclosure in the sale of disability insurance, an enrollment form or evidence of coverage may not be delivered or issued for delivery in this state by a health maintenance organization unless an outline of coverage is delivered to the applicant at the time the application is made. The outline of coverage must be filed with the commissioner as required by 33-1-501.

(2) The outline of coverage must include:

(a) a general description of the principal benefits and coverages provided by the policy;

(b) a general description of the insureds financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;

(c) a statement of the maximum lifetime benefit available under the policy;

(d) a statement of the estimated periodic premium to be paid by the insured;

(e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant; and

(f) a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.

(3) The outline of coverage may include any other information that the insurer considers relevant to the applicants selection of an appropriate health benefit plan.

(4) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public.

The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.

History: **En. Sec. 7, Ch. 527, L. 1995.**

33-31-322. Uniform health benefit plan — health maintenance organization. Each health maintenance organization delivering or issuing for delivery in this state an enrollment form or evidence of coverage shall make available a uniform health benefit plan providing benefit value, as defined in 33-22-1803, comparable to the uniform health benefit plan required in 33-22-245(2).

History: **En. Sec. 10, Ch. 527, L. 1995; amd. Sec. 31, Ch. 416, L. 1997.**

Part 4

Supervision, Rehabilitation, and Liquidation

33-31-401. Examination. (1) The commissioner may examine the affairs of a health maintenance organization as often as is reasonably necessary to protect the interests of the people of this state. The commissioner shall make an examination at least once every 3 years. The provisions of 33-1-408 and 33-1-409 apply to examinations under this section.

(2) Each authorized health maintenance organization and provider shall submit its relevant books and records for the examinations and in every way facilitate the examinations. For the purpose of examination, the commissioner may administer oaths to and examine the officers and insurance producers of the health maintenance organization and the principals of the providers concerning their business.

(3) (a) Upon presentation of a detailed account of the charges and expenses of examinations by the commissioner, the health maintenance organization being examined shall pay to the examiner as necessarily incurred on account of the examination the actual travel expenses, a reasonable living-expense allowance, and a per diem, all at reasonable rates customary therefor and as established or adopted by the commissioner. The commissioner may present an account periodically during the course of the examination or at the termination of the examination as the commissioner considers proper. A person may not pay and an examiner may not accept any additional emolument on account of any examination.

(b) If a health maintenance organization fails to pay the charges and expenses as referred to in subsection (3)(a), the commissioner shall pay them out of the funds of the commissioner in the same manner as other disbursements of funds. The amount paid is a lien upon all of the person's assets and property in this state and may be recovered by suit by the attorney general on behalf of the state and restored to the appropriate fund.

(4) In lieu of an examination, the commissioner may accept the report of an examination made by the commissioner of another state.

History: **En. Sec. 17, Ch. 457, L. 1987; amd. Sec. 7, Ch. 628, L. 1989; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 6, Ch. 437, L. 1991; amd. Sec. 61, Ch. 472, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 472 in (1) inserted third sentence applying certain statutory provisions to examinations; and made minor changes in style. Amendment effective October 1, 1999.

33-31-402. Suspension or revocation of certificate of authority. (1) The commissioner may in his discretion suspend or revoke any certificate of authority issued to a health maintenance organization under this chapter if he finds that any of the following conditions exist:

(a) The health maintenance organization is operating in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under 33-31-201 and provided that such operation adversely affects the health maintenance organization's ability to provide benefits and operate under the application approved by the commissioner, unless amendments to such submissions have been filed with and approved by the commissioner.

(b) The health maintenance organization issues evidences of coverage or uses a schedule of charges for health care services that do not comply with the requirements of 33-31-301.

(c) The health maintenance organization does not provide or arrange for basic health care services.

(d) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(e) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under 33-31-222.

(f) The health maintenance organization has failed to implement the complaint system required by 33-31-303 to resolve valid complaints in a reasonable manner.

(g) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(h) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(i) The health maintenance organization has otherwise failed to substantially comply with this chapter.

(2) The commissioner may in his discretion suspend or revoke a certificate of authority only if he complies with the requirements of 33-31-404.

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization may not, during the period of such suspension, enroll any additional enrollees except newborn infants or other newly acquired dependents of existing enrollees and may not engage in any advertising or solicitation.

(4) If the commissioner revokes the certificate of authority of a health maintenance organization, the health maintenance organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and may not transact further business except as may be essential to the orderly conclusion of its affairs. It may not engage in further advertising or solicitation following the effective date of the order of revocation. The commissioner may by written order permit further operation of the health maintenance organization if he finds further operation to be in the best interest of enrollees to the extent that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

History: En. Sec. 18, Ch. 457, L. 1987; amd. Sec. 7, Ch. 437, L. 1991.

33-31-403. Supervision, rehabilitation, or liquidation of a health maintenance organization. (1) The supervision, rehabilitation, or liquidation of a health maintenance organization is considered to be the supervision, rehabilitation, or liquidation of an insurer and must be conducted under the supervision of the commissioner pursuant to chapter 2, part 13. The commissioner may apply for an order directing him to supervise, rehabilitate, or liquidate a health maintenance organization upon any one or more grounds set out in 33-2-1321, 33-2-1331, or 33-2-1341 or when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state. Enrollees shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(2) A claim by a health care provider for an uncovered expenditure has the same priority as a claim by an enrollee if the provider of services agrees not to assert the claim against any enrollee of the health maintenance organization.

History: **En. Sec. 19, Ch. 457, L. 1987.**

33-31-404. Administrative procedures. (1) When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist or that grounds for the suspension or revocation of a certificate of authority exist, he shall give written notice to the health maintenance organization specifically stating the grounds for denial, suspension, or revocation and fixing a time of at least 30 days after the notice for a hearing on the matter.

(2) After the hearing, or upon the failure of the health maintenance organization to appear at the hearing, the commissioner shall make written findings and act as he considers advisable. The commissioner shall mail the written findings to the health maintenance organization. The action of the commissioner is subject to review by the district court having jurisdiction. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the commissioner in whole or in part.

(3) Where notice and hearing are required with regard to actions taken by the commissioner under this chapter, the requirements of 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, apply, except that the formal rules of pleading and evidence must be observed. To the extent that 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, do not address the notice and hearing requirements of this chapter, the provisions of Title 2, chapter 4, parts 6 and 7, apply.

History: **En. Sec. 21, Ch. 457, L. 1987; amd. Sec. 8, Ch. 437, L. 1991.**

33-31-405. Penalties and enforcement. (1) The commissioner may, in addition to suspension or revocation of a certificate of authority under 33-31-402, after notice and hearing, impose an administrative penalty in an amount not less than $500 or more than $10,000 if he gives reasonable notice in writing of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations that gave rise to the penalty citation.

(2) If the commissioner has cause to believe that a violation of this chapter has occurred or is threatened, the commissioner may:

(a) give notice to the health maintenance organization and to the representatives or other persons who appear to be involved in the suspected violation;

(b) arrange a conference with the alleged violators or their authorized representatives to attempt to ascertain the facts relating to the suspected violation; and

(c) if it appears that a violation has occurred or is threatened, arrive at an adequate and effective means of correcting or preventing the violation.

(3) (a) The commissioner may issue an order directing a health maintenance organization or its representative to cease and desist from engaging in an act or practice in violation of this chapter.

(b) Within 15 days after service of the cease and desist order, the respondent may request a hearing to determine whether acts or practices in violation of this chapter have occurred. The hearing must be conducted pursuant to Title 2, chapter 4, part 6, and judicial review must be available as provided by Title 2, chapter 4, part 7.

(4) If a health maintenance organization violates a provision of this chapter and the commissioner elects not to issue a cease and desist order or if the respondent

does not comply with a cease and desist order issued pursuant to subsection (3), the commissioner may institute a proceeding to obtain injunctive or other appropriate relief in the district court of Lewis and Clark County.

History: En. Sec. 23, Ch. 457, L. 1987; amd. Sec. 9, Ch. 437, L. 1991.

CHAPTER 32

HEALTH UTILIZATION REVIEW

Part 1 — General Provisions

33-32-101. Purpose.
33-32-102. Definitions.
33-32-103. Utilization review plan.
33-32-104. Preemption by federal law.
33-32-105. Application — exemptions.

Part 2 — Utilization Review—Conduct

33-32-201. Conduct of utilization review.
33-32-202. Commissioner not to approve or disapprove plans.
33-32-203. Appeal and assignment of claim.
33-32-204. Commissioner to adopt rules.

Part 1

General Provisions

33-32-101. Purpose. The legislature finds and declares that it is the purpose of this chapter to:

(1) promote the delivery of quality health care in a cost-effective manner;

(2) foster greater coordination between health care providers, third-party payors, and others who conduct utilization review activities;

(3) ensure access to health care services; and

(4) protect patients, employers, and health care providers by ensuring that utilization review activities result in informed decisions on the appropriateness of medical care made by those best qualified to be involved in the utilization review process.

History: En. Sec. 1, Ch. 665, L. 1991.

33-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

(2) "Health care provider" means a person, corporation, facility, or institution licensed by the state to provide or otherwise lawfully providing health care services, including but not limited to:

(a) a physician, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist, certified chemical dependency counselor, or licensed professional counselor; and

(b) an officer, employee, or agent of a person described in subsection (2)(a) acting in the course and scope of employment.

(3) "Health care services" means the health care and services provided by health care providers, including drugs, medicines, ambulance services, and other therapeutic and rehabilitative services and supplies.

(4) "Utilization review" means a system for review of health care services for a patient to determine the necessity or appropriateness of services, whether that review is prospective, concurrent, or retrospective, when the review will be utilized directly or indirectly in order to determine whether the health care services will be paid, covered, or provided. Utilization review does not include routine claim administration or determination that does not include determinations of medical necessity or appropriateness.

History: En. Sec. 2, Ch. 665, L. 1991.

33-32-103. Utilization review plan. A person may not conduct a utilization review of health care services provided or to be provided to a patient covered under a contract or plan for health care services issued in this state unless that person, at all times, maintains with the commissioner a current utilization review plan that includes:

(1) a description of review criteria, standards, and procedures to be used in evaluating proposed or delivered health care services that, to the extent possible, must:

(a) be based on nationally recognized criteria, standards, and procedures;

(b) reflect community standards of care, except that a utilization review plan for health care services under the medicaid program provided for in Title 53 need not reflect community standards of care;

(c) ensure quality of care; and

(d) ensure access to needed health care services;

(2) the provisions by which patients or providers may seek reconsideration or appeal of adverse decisions by the person conducting the utilization review;

(3) the type and qualifications of the personnel either employed or under contract to perform the utilization review;

(4) policies and procedures to ensure that a representative of the person conducting the utilization review is reasonably accessible to patients and health care providers at all times;

(5) policies and procedures to ensure compliance with all applicable state and federal laws to protect the confidentiality of individual medical records;

(6) a copy of the materials designed to inform applicable patients and health care providers of the requirements of the utilization review plan; and

(7) any other information as may be required by the commissioner that is necessary to implement this chapter.

History: En. Sec. 3, Ch. 665, L. 1991; amd. Sec. 5, Ch. 561, L. 1993.

33-32-104. Preemption by federal law. If any provision of this chapter is preempted or duplicated by federal law or regulations as applied to any specific health care service, then the provision of this chapter that is preempted or duplicated by federal law or regulations does not apply to that health care service but only to the extent of the preemption or duplication.

History: En. Sec. 8, Ch. 665, L. 1991.

33-32-105. Application — exemptions. (1) The provisions of this chapter apply to a person or entity performing utilization reviews who is, or is affiliated with, under contract with, or acting on behalf of:

(a) a Montana business entity; or

(b) a third party that provides or administers health care benefits to citizens of this state, including:

(i) a health insurer, nonprofit health service plan, health service corporation, employees' health and welfare fund, or preferred provider organization authorized to offer health insurance policies or contracts;

(ii) a health maintenance organization issued a certificate of authority in accordance with Title 33, chapter 31; or

(iii) a state agency.

(2) A general in-house utilization review for a health care provider, including an in-house utilization review that is conducted by or for a long-term care facility and that is required by medicare or medicaid regulations, is exempt from the provisions of this chapter as long as the review does not directly result in the approval or denial of payment for health care services for a particular case.

(3) A peer review procedure conducted by a professional society or association of providers is exempt from the provisions of this chapter.

History: En. Sec. 9, Ch. 665, L. 1991.

Part 2

Utilization Review — Conduct

33-32-201. Conduct of utilization review. A program of utilization review with regard to health care services provided or to be provided in this state must comply with the following:

(1) The insurer, health maintenance organization, or their agents conducting the utilization review of outpatient mental health treatment may request only information that is relevant to the payment of the claim.

(2) When a utilization review requires disclosure of personal information regarding the patient or client, including personal and family history or current and past symptoms of a mental disorder, then the identity of that individual must be concealed from anyone having access to that information in order that the patient or client may remain anonymous.

(3) A determination that is made on appeal or reconsideration as provided in 33-32-203 and that is adverse to a patient or to an affected health care provider may not be made on a question relating to the necessity or appropriateness of a health care service without prior written findings, evaluation, and concurrence in the adverse determination by a health care professional trained in the relevant area of health care. Copies of the written findings, evaluation, and concurrence must be provided to the patient on request as provided in Title 33, chapter 19.

(4) A determination made on appeal or reconsideration, as provided in 33-32-203, that health care services rendered or to be rendered are medically inappropriate may not be made unless the health care professional performing the utilization review has made a reasonable attempt to consult with the patient's attending health care provider concerning the necessity or appropriateness of the health care service.

(5) The following provisions must govern the conduct of a utilization review of health care services rendered to a patient by a health care provider who is a licensed social worker, licensed professional counselor, licensed psychiatric nurse, licensed psychiatrist, or a licensed psychologist:

(a) If a review of the patient's or the health care provider's records is required by the insurer in the course of an appeal or a redetermination of an adverse determination of medical necessity or appropriateness made pursuant to an insurer's review, the review must be conducted by a person trained in the field of the provider.

(b) During an appeal or redetermination, the patient may, at the patient's expense, request an independent review of the patient's or the provider's records by a health care provider licensed in the field of the provider that rendered the health care service and may require that review to be considered by the insurer in reaching its decision. If the initial adverse determination of medical necessity or appropriateness is reversed, the insurer shall bear the expense of the independent review.

History: En. Sec. 4, Ch. 665, L. 1991; amd. Sec. 1, Ch. 378, L. 1993.

33-32-202. Commissioner not to approve or disapprove plans. Nothing in this chapter may be construed as authorizing the commissioner to approve or disapprove a utilization review plan required in 33-32-103.

History: En. Sec. 5, Ch. 665, L. 1991.

33-32-203. Appeal and assignment of claim. (1) A patient or provider affected by an adverse decision has at least 30 days in which to appeal or seek reconsideration of the adverse decision by the person conducting the utilization review.

(2) A final decision on appeal or reconsideration must be made within 60 days of receipt of all relevant medical records by the person conducting the utilization review.

History: En. Sec. 6, Ch. 665, L. 1991.

33-32-204. Commissioner to adopt rules. The commissioner may adopt rules for the implementation of this chapter, including but not limited to rules providing for:

(1) information to be included in the utilization review plan required in 33-32-103;

(2) utilization review criteria, standards, and procedures; and

(3) the protection of the confidentiality of medical records used in the course of utilization reviews.

History: En. Sec. 7, Ch. 665, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTERS 33 and 34

RESERVED

CHAPTER 35

MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

Part 1 — General Provisions

33-35-101. Short title.
33-35-102. Purpose.
33-35-103. Definitions.

Part 2 — Certificate of Authority

33-35-201. Certificate of authority.
33-35-202. Eligibility for certificate of authority.
33-35-203. Requirements applicable only to arrangements organized after October 1, 1995.
33-35-204 reserved.
33-35-205. Application for certificate of authority.
33-35-206 through 33-35-208 reserved.
33-35-209. Minimum reserve requirements.
33-35-210. Minimum funding levels.
33-35-211. Issuance of certificate of authority.

Part 3 — Enforcement

33-35-301. Reporting.
33-35-302. Failure to comply.
33-35-303. Violation by arrangement failing to obtain or maintain certificate of authority.

33-35-304 and 33-35-305 reserved.
33-35-306. Application of insurance code to arrangements.
33-35-307. Disclosure.

Chapter Cross-References

Guaranteed renewability in multiple employer welfare arrangements, 33-22-525.

Part 1

General Provisions

33-35-101. Short title. This chapter may be cited as the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act".

History: En. Sec. 1, Ch. 420, L. 1995.

33-35-102. Purpose. The purposes of this chapter are to:

(1) provide for the authorization and registration of self-funded multiple employer welfare arrangements;

(2) regulate self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements;

(3) provide reporting requirements for self-funded multiple employer welfare arrangements; and

(4) provide for sanctions against self-funded multiple employer welfare arrangements organized and maintained in Montana that do not comply with this chapter.

History: En. Sec. 2, Ch. 420, L. 1995.

33-35-103. Definitions. As used in this chapter, unless a contrary intent appears, the following definitions apply:

(1) "Allowable benefit" means a benefit relating to medical, surgical, or hospital care in the event of sickness, accident, disability, or any combination of sickness, accident, or disability.

(2) (a) "Bona fide association" means an association of employers that has been in existence for a period of not less than 5 years prior to sponsoring a self-funded multiple employer welfare arrangement, during which time the association has engaged in substantial activities relating to the common interests of member employers, and that continues to engage in substantial activities in addition to sponsoring an arrangement.

(b) Notwithstanding subsection (2)(a), an association that was formed and began sponsoring an arrangement prior to October 1, 1995, is not subject to the requirement that the association be in existence for 5 years prior to sponsoring an arrangement.

(3) "Claims liability" means the total of all incurred and unpaid claims for allowable benefits under a self-funded multiple employer welfare arrangement that are not reimbursed or reimbursable by excess loss insurance, subrogation, or other sources.

(4) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as defined by 29 U.S.C. 1002. The term does not include an arrangement, plan, program, or interlocal agreement of or between political subdivisions of this state, including school districts, as provided in 33-1-102.

(5) "Reserves" means the excess of the assets of a self-funded multiple employer welfare arrangement minus the liabilities of the arrangement. The liabilities of a self-funded multiple employer welfare arrangement include the claims liability of the arrangement.

(6) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies licensed under this title.

History: En. Sec. 3, Ch. 420, L. 1995.

Part 2

Certificate of Authority

33-35-201. Certificate of authority. (1) Except as provided in subsection (3), a person may not establish or maintain a self-funded multiple employer welfare arrangement in Montana unless the arrangement first obtains a certificate of authority from the commissioner.

(2) A self-funded multiple employer welfare arrangement is considered to be established or maintained in Montana if one or more of the employer members participating in the arrangement is either domiciled in or maintains its principal place of business in Montana.

(3) A self-funded multiple employer welfare arrangement established and maintained in Montana prior to January 1, 1995, has until April 1, 1996, to file an application for a certificate of authority. An arrangement that files an application for a certificate of authority by that date is considered to have been issued a certificate of authority unless the commissioner finally denies the arrangement's application for a certificate of authority.

History: En. Sec. 4, Ch. 420, L. 1995.

33-35-202. Eligibility for certificate of authority. The commissioner may not issue a certificate of authority to a self-funded multiple employer welfare arrangement unless the arrangement establishes to the reasonable satisfaction of the commissioner that the following requirements have been satisfied by the arrangement:

(1) the employers participating in the self-funded multiple employer welfare arrangement are either engaged in the same trade, profession, or industry or the employers participating in the arrangement are members of a bona fide association;

(2) the employers participating in the arrangement exercise control over the arrangement, as follows:

(a) Subject to subsection (2)(b), control exists if the employers participating in the arrangement have the right to elect at least 75% of the individuals designated in the arrangement's organizational documents as having control over the operations of the arrangement and the individuals designated in the arrangement's organizational documents in fact exercise control over the operation of the arrangement.

(b) The use of a third-party administrator to process claims and to assist in the administration of the arrangement is not evidence of the lack of exercise of control over the operation of the arrangement.

(3) the arrangement provides only allowable benefits. However, an arrangement may provide life insurance coverage to its participants if the coverage is provided pursuant to contracts of insurance that comply with Title 33, chapter 20, parts 10 through 12.

(4) the arrangement provides allowable benefits to not less than 2 employers and not less than 75 employees;

(5) the arrangement may not solicit participation in the arrangement from the general public. However, the arrangement may employ or independently contract with a licensed insurance producer who may be paid a commission or other remuneration to enroll employers in the arrangement, and employees of the

arrangement, employees of the association sponsoring the arrangement, or employees of affiliates of the association, other than licensed insurance producers, may enroll employers in the arrangement if the employees do not receive a commission or other remuneration in addition to their customary compensation for enrolling employers.

(6) the arrangement is not organized or maintained solely as a conduit for the collection of premiums and the forwarding of premiums to an insurance company. However, it is permissible for a self-funded multiple employer welfare arrangement to act as a conduit for the collection and forwarding of premiums for life insurance coverage pursuant to subsection (3).

History: En. Sec. 5, Ch. 420, L. 1995.

33-35-203. Requirements applicable only to arrangements organized after October 1, 1995. (1) In addition to the requirements of 33-35-202, self-funded multiple employer welfare arrangements formed after October 1, 1995, are subject to the following requirements:

(a) arrangements shall maintain a calendar year for operations and reporting purposes unless the commissioner consents to a fiscal year;

(b) arrangements shall satisfy one of the following requirements:

(i) (A) the arrangement shall deposit $200,000 with the commissioner pursuant to Title 33, chapter 2, part 6, to be used for the payment of claims in the event that the arrangement becomes insolvent; and

(B) the arrangement shall submit to the commissioner a written plan of operation that, in the reasonable discretion of the commissioner, ensures the financial integrity of the arrangement; or

(ii) the arrangement demonstrates to the reasonable satisfaction of the commissioner the ability of the arrangement to remain financially solvent, for which purpose the commissioner may consider:

(A) the pro forma financial statements of the self-funded multiple employer welfare arrangement;

(B) the types and levels of excess loss insurance coverage, including the attachment points of the coverage and whether the points are reflected as annual or monthly levels;

(C) whether a deposit is required for each employee covered under the arrangement equal to at least one month's cost of providing benefits under the arrangement;

(D) the experience of the individuals who will be involved in the management of the arrangement, including employees, independent contractors, and consultants; and

(E) other factors as reasonably determined by the commissioner to be relevant to a determination of whether the arrangement is able to operate in a financially solvent manner.

(2) Financial information relating to the employers is subject to the confidentiality provisions of 33-1-409(6).

(3) The commissioner may require that the articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement provide that employers participating in the arrangement are subject to pro rata assessment for all liabilities of the arrangement.

(4) Arrangements shall maintain excess loss insurance coverage covering 100% of claims in excess of the designated attachment point. The commissioner may waive the requirement of excess loss insurance coverage.

(5) An arrangement shall submit its base contribution rates for participation under the arrangement for its initial year of operations for review and approval by the commissioner.

(6) The commissioner may require continued compliance with respect to the conditions set forth in this section as a condition of granting a certificate of authority to an arrangement. The commissioner may waive continued compliance with respect to the conditions in this section at any time after the commissioner has granted a certificate of authority to an arrangement.

History: **En. Sec. 6, Ch. 420, L. 1995.**

33-35-204 reserved.

33-35-205. Application for certificate of authority. A self-funded multiple employer welfare arrangement shall apply for a certificate of authority on a form prescribed by the commissioner and shall submit the application, together with the following documents, to the commissioner:

(1) a copy of all articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement;

(2) a copy of the summary plan description or summary plan descriptions of the arrangement filed or required to be filed with the United States department of labor, together with any amendments to the description;

(3) evidence of coverage of or letters of intent to participate executed by at least 2 employers providing allowable benefits to at least 75 employees;

(4) a copy of the arrangement's most recent year's financial statements or, if the arrangement has been in existence for less than 1 year, pro forma financial statements that must include, at a minimum, a balance sheet, an income statement, a statement of changes in financial position, and an actuarial opinion that the unpaid claim liability of the arrangement satisfies the standards of 33-2-514. The commissioner may, in the commissioner's discretion, waive the requirement of an actuarial opinion and require a report by an actuarial firm.

(5) proof that the arrangement maintains or will maintain fidelity bonds required by the United States department of labor pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;

(6) a copy of any excess loss insurance coverage policies maintained or proposed to be maintained by the arrangement;

(7) biographical reports on forms prescribed by the national association of insurance commissioners evidencing the general trustworthiness and competence of each individual who is serving or who will serve as an employee or fiduciary of the arrangement; and

(8) a statement executed by a representative of the arrangement certifying, to the best knowledge and belief of the representative, that:

(a) the arrangement is in compliance with requirements of 33-35-202;

(b) the arrangement is in compliance with the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., or a statement of any requirements with which the arrangement is not in compliance and a statement of proposed corrective actions; and

(c) the arrangement is in compliance with requirements of 33-35-209 and 33-35-210.

History: **En. Sec. 7, Ch. 420, L. 1995.**

33-35-206 through 33-35-208 reserved.

33-35-209. Minimum reserve requirements. Self-funded multiple employer welfare arrangements shall establish by the end of the first year of operations of the arrangement and shall maintain as of the end of each year of operations reserves equal to at least 30% of the unpaid claims liability of the arrangement. The commissioner may adopt rules regarding the supervision, rehabilitation, and liquidation of self-funded multiple employer welfare arrangements that fail to maintain the level of reserves required by this section.

History: En. Sec. 8, Ch. 420, L. 1995.

33-35-210. Minimum funding levels. A self-funded multiple employer welfare arrangement shall establish and maintain contribution rates for participation under the arrangement that satisfy either of the following requirements:

(1) contribution rates must equal or exceed the sum of projected claims liability for the year, plus all projected costs of operation of the arrangement for the year, plus an amount equal to any deficiency in the reserves of the arrangement for the prior year, minus an amount equal to the reserves of the arrangement in excess of the minimum required level of reserves; or

(2) contribution rates must equal or exceed a funding level established by a report prepared by an actuarial firm.

History: En. Sec. 9, Ch. 420, L. 1995.

33-35-211. Issuance of certificate of authority. (1) The commissioner shall grant or deny an application for a certificate of authority within 180 days of the date that a completed application, together with the items designated in 33-35-205, is submitted to the commissioner.

(2) The commissioner shall grant the application of an arrangement that satisfies the applicable requirements of 33-35-202, 33-35-203, 33-35-205, 33-35-209, and 33-35-210.

(3) The commissioner shall deny the application of an arrangement that does not satisfy the applicable requirements of 33-35-202, 33-35-203, 33-35-205, 33-35-209, and 33-35-210. Denial of an application for a certificate of authority is considered a contested case under the Montana Administrative Procedure Act.

(4) A certificate of authority granted to an arrangement is effective unless revoked by the commissioner under 33-35-302.

History: En. Sec. 10, Ch. 420, L. 1995.

Part 3

Enforcement

33-35-301. Reporting. (1) A self-funded multiple employer welfare arrangement shall comply with the reporting requirements of this section.

(2) Within 3 months following the close of the arrangement's year of operations, the arrangement shall file with the commissioner, on forms prescribed by the commissioner:

(a) a statement of financial condition;

(b) a statement of change in financial conditions accompanied by an actuarial opinion that the unpaid claim liability of the arrangement satisfies the standards of 33-2-514. The commissioner may, in the commissioner's discretion, waive the requirement of an actuarial opinion and require a report prepared by an actuarial firm and, upon a showing of good cause, may extend by 30 days the filing date for the report.

(c) a statement of its contribution rates for the ensuing year;

(d) a statement of operations for the previous year;

(e) if the total payments to the arrangement for participation during the prior year of operations exceeded the sum of $2 million, an audit satisfying the requirements of the commissioner's rules governing annual audited reports, certified by an independent certified public accountant. The filing date for the audit must be extended by the commissioner upon a showing of good cause.

(f) additional information as the commissioner reasonably determines to be necessary to determine the financial integrity of the management.

(3) An arrangement shall file with the commissioner a copy of the arrangement's Internal Revenue Service form 5500 together with all attachments to the form, at the time required for filing the form.

History: En. Sec. 11, Ch. 420, L. 1995.

33-35-302. Failure to comply. (1) Pursuant to 33-1-317 and 33-1-318, the commissioner may impose sanctions against a self-funded multiple employer welfare arrangement that fails to comply with the provisions of this chapter. The maximum fine may not exceed $5,000 for each violation.

(2) The commissioner may issue a notice of intent to revoke the certificate of authority of a self-funded multiple employer welfare arrangement that fails to comply with the provisions of 33-35-209, 33-35-210, or 33-35-301. If, within 60 days of receiving notice under this subsection, the arrangement fails to file with the commissioner a plan to bring the arrangement into compliance with 33-35-209, 33-35-210, or 33-35-301, the commissioner may revoke the arrangement's certificate of authority. A revocation of a certificate of authority is a contested case under the Montana Administrative Procedure Act.

(3) The commissioner shall adopt rules to provide sanctions for an arrangement that fails to maintain the level of reserves required by 33-35-209. The rules must be consistent with the provisions of Title 33, chapter 2, part 13.

History: En. Sec. 12, Ch. 420, L. 1995.

33-35-303. Violation by arrangement failing to obtain or maintain certificate of authority. A self-funded multiple employer welfare arrangement organized or maintained in Montana without a certificate of authority is in violation of 33-2-101.

History: En. Sec. 13, Ch. 420, L. 1995.

33-35-304 and 33-35-305 reserved.

33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions of Title 33:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308;

(d) Title 33, chapter 18, except 33-18-242;

(e) 33-22-131, 33-22-134, and 33-22-135; and

(f) 33-22-525 and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked.

History: En. Sec. 14, Ch. 420, L. 1995; amd. Sec. 7, Ch. 410, L. 1997; amd. Sec. 32, Ch. 416, L. 1997; amd. Sec. 5, Ch. 434, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 434 in (1)(e) inserted reference to 33-22-131; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 6, Ch. 434, L. 1999, provided that this section is effective January 1, 2000, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

33-35-307. Disclosure. Each policy issued by a self-funded multiple employer welfare arrangement must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by a self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for a self-funded multiple employer welfare arrangement."

History: En. Sec. 15, Ch. 420, L. 1995.

CHAPTER 36

MANAGED CARE PLAN NETWORK ADEQUACY AND QUALITY ASSURANCE

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Chapter Cross-References

Disability insurance, Title 33, ch. 22.

Workers' compensation — managed care and preferred provider organizations, Title 39, ch. 71, part 11.

Medicaid managed care — capitated health care, 53-6-116.

Medicaid managed care, Title 53, ch. 6, part 7.

Part 1

General Provisions

33-36-101. Short title. This chapter may be cited as the "Managed Care Plan Network Adequacy and Quality Assurance Act".

History: En. Sec. 8, Ch. 413, L. 1997.

33-36-102. Purpose. The purpose and intent of this chapter are to:

(1) establish standards for the creation and maintenance of networks by health carriers offering managed care plans and to ensure the adequacy, accessibility, and quality of health care services offered under a managed care plan by establishing requirements for written agreements between health carriers offering managed care plans and participating providers regarding the standards, terms, and provisions under which the participating provider will provide services to covered persons;

(2) provide for the implementation of state network adequacy and quality assurance standards in administrative rules, provide for monitoring compliance with those standards, and provide a mechanism for detecting and reporting violations of those standards to the commissioner;

(3) establish minimum criteria for the quality assessment activities of a health carrier issuing a closed plan or a combination plan and to require that minimum state quality assessment criteria be adopted by rule;

(4) enable health carriers to evaluate, maintain, and improve the quality of health care services provided to covered persons; and

(5) provide a streamlined and simplified process by which managed care network adequacy and quality assurance programs may be monitored for compliance through coordinated efforts of the commissioner and the department. It is not the purpose or intent of this chapter to apply quality assurance standards applicable to medicaid or medicare to managed care plans regulated pursuant to this chapter or to create or require the creation of quality assurance programs that are as comprehensive as quality assurance programs applicable to medicaid or medicare.

History: En. Sec. 9, Ch. 413, L. 1997.

33-36-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

(5) "Department" means the department of public health and human services established in 2-15-2201.

(6) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(7) "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, as defined in 50-5-101, or other licensed inpatient center, an ambulatory surgical or treatment center, a skilled nursing center, a residential treatment center, a diagnostic, laboratory, or imaging center, or a rehabilitation or other therapeutic health setting.

(9) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(10) "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

(11) "Health care provider" or "provider" means a health care professional or a facility.

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(13) "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

(14) "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

(15) "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

(16) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(17) "Network" means the group of participating providers that provides health care services to a managed care plan.

(18) "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

(19) "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

(20) "Primary care professional" means a participating health care professional designated by the health carrier to supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

(21) "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

(22) "Quality assurance" means quality assessment and quality improvement.

(23) "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan.

History: **En. Sec. 10, Ch. 413, L. 1997.**

33-36-104. Applicability and scope. This chapter applies to all health carriers that offer managed care plans. This chapter does not exempt a health carrier from the applicable requirements of federal law when providing a managed care plan to medicare recipients or from the applicable requirements of federal law or Title 53, chapter 6, when providing a managed care plan to medicaid recipients.

History: **En. Sec. 11, Ch. 413, L. 1997.**

33-36-105. Department — general powers and duties — rulemaking. (1) The department shall:

(a) adopt rules pursuant to the Montana Administrative Procedure Act establishing minimum state standards for network adequacy and quality assurance and procedures for ensuring compliance with those standards; and

(b) recommend action to the commissioner against a health carrier whose managed care plan does not comply with standards for network adequacy and quality assurance adopted by the department.

(2) Quality assurance standards adopted by the department must consist of some but not all of the health plan employer data and information standards. The department shall select and adopt only standards appropriate for quality assurance in Montana.

(3) The state may contract, through a competitive bidding process, for the development of network adequacy and quality assurance standards.

History: **En. Sec. 12, Ch. 413, L. 1997.**

Part 2

Network Adequacy

33-36-201. Network adequacy — standards — access plan required. (1) A health carrier offering a managed care plan in this state shall maintain a network that is sufficient in numbers and types of providers to ensure that all services to covered persons are accessible without unreasonable delay. Sufficiency in number and type of provider is determined in accordance with the requirements of this section. Covered persons must have access to emergency care 24 hours a day, 7 days a week. A health carrier providing a managed care plan shall use reasonable criteria to determine sufficiency. The criteria may include but are not limited to:

(a) a ratio of specialty care providers to covered persons;

(b) a ratio of primary care providers to covered persons;

(c) geographic accessibility;

(d) waiting times for appointments with participating providers;

(e) hours of operation; or

(f) the volume of technological and specialty services available to serve the needs of covered persons requiring technologically advanced or specialty care.

(2) Whenever a health carrier has an insufficient number or type of participating providers to provide a covered benefit, the health carrier shall ensure that the covered person obtains the covered benefit at no greater cost to the covered person than if the covered benefit were obtained from participating providers or shall make other arrangements acceptable to the department.

(3) The health carrier shall establish and maintain adequate provider networks to ensure reasonable proximity of participating providers to the businesses or personal residences of covered persons. In determining whether a health carrier has complied with this requirement, consideration must be given to

the relative availability of health care providers in the service area under consideration.

(4) A health carrier offering a managed care plan in this state on October 1, 1999, shall file with the department on October 1, 1999, an access plan complying with subsection (6) and the rules of the department. A health carrier offering a managed care plan in this state for the first time after October 1, 1999, shall file with the department an access plan meeting the requirements of subsection (6) and the rules of the department before offering the managed care plan. A plan must be filed with the department in a manner and form complying with the rules of the department. A health carrier shall file any subsequent material changes in its access plan with the department within 30 days of implementation of the change.

(5) A health carrier may request the department to designate parts of its access plan as proprietary or competitive information, and when designated, that part may not be made public. For the purposes of this section, information is proprietary or competitive if revealing the information would cause the health carrier's competitors to obtain valuable business information. A health carrier shall make the access plans, absent proprietary information, available on its business premises and shall provide a copy of the plan upon request.

(6) An access plan for each managed care plan offered in this state must describe or contain at least the following:

(a) a listing of the names and specialties of the health carrier's participating providers;

(b) the health carrier's procedures for making referrals within and outside its network;

(c) the health carrier's process for monitoring and ensuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in the managed care plan;

(d) the health carrier's efforts to address the needs of covered persons with limited English proficiency and illiteracy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(e) the health carrier's methods for assessing the health care needs of covered persons and their satisfaction with services;

(f) the health carrier's method of informing covered persons of the plan's services and features, including but not limited to the plan's grievance procedures, its process for choosing and changing providers, and its procedures for providing and approving emergency and specialty care;

(g) the health carrier's system for ensuring the coordination and continuity of care for covered persons referred to specialty physicians and for covered persons using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;

(h) the health carrier's process for enabling covered persons to change primary care professionals;

(i) the health carrier's proposed plan for providing continuity of care in the event of contract termination between the health carrier and a participating provider or in the event of the health carrier's insolvency or other inability to continue operations. The description must explain how covered persons will be notified of the contract termination or the health carrier's insolvency or other cessation of operations and be transferred to other providers in a timely manner.

(j) any other information required by the department to determine compliance with this part and the rules implementing this part.

(7) The department shall ensure timely and expedited review and approval of the access plan and other requirements in this section.

History: **En. Sec. 13, Ch. 413, L. 1997.**

33-36-202. Provider responsibility for care — contracts — prohibited collection practices. (1) A contract between a health carrier and a participating provider must set forth a hold harmless provision specifying protection for covered persons. This requirement is met by including in a contract a provision substantially the same as the following:

"The provider agrees that the provider may not for any reason, including but not limited to nonpayment by the health carrier or intermediary, insolvency of the health carrier or intermediary, or breach of this agreement, bill, charge, collect a deposit, seek compensation, remuneration, or reimbursement, or have any recourse from or against a covered person or a person other than the health carrier or intermediary acting on behalf of the covered person for services provided pursuant to this agreement. This agreement does not prohibit the provider from collecting coinsurance, copayments, or deductibles, as specifically provided in the evidence of coverage, or fees for uncovered services delivered on a fee-for-service basis to a covered person. This agreement does not prohibit a provider, except a health care professional who is employed full-time on the staff of a health carrier and who has agreed to provide services exclusively to that health carrier's covered persons and no others, and a covered person from agreeing to continue services solely at the expense of the covered person if the provider has clearly informed the covered person that the health carrier may not cover or continue to cover a specific service or services. Except as provided in this agreement, this agreement does not prohibit the provider from pursuing any legal remedy available for obtaining payment for services from the health carrier."

(2) A contract between a health carrier and a participating provider must state that if a health carrier or intermediary becomes insolvent or otherwise ceases operations, covered benefits to covered persons will continue through the end of the period for which a premium has been paid to the health carrier on behalf of the covered person, but not to exceed 30 days, or until the covered person's discharge from an acute care inpatient facility, whichever occurs last. Covered benefits to a covered person confined in an acute care inpatient facility on the date of insolvency or other cessation of operations must be continued by a provider until the confinement in an inpatient facility is no longer medically necessary.

(3) The contract provisions that satisfy the requirements of subsections (1) and (2) must be construed in favor of the covered person, survive the termination of the contract regardless of the reason for termination, including the insolvency of the health carrier, and supersede an oral or written contrary agreement between a participating provider and a covered person or the representative of a covered person if the contrary agreement is inconsistent with the hold harmless and continuation of covered benefits provisions required by subsections (1) and (2).

(4) A participating provider may not collect or attempt to collect from a covered person money owed to the provider by the health carrier.

History: **En. Sec. 14, Ch. 413, L. 1997.**

33-36-203. Selection of providers — professional credentials standards. (1) A health carrier shall adopt standards for selecting participating providers who are primary care professionals and for each health care professional specialty within the health carrier's network. The health carrier shall use the standards to select health care professionals, the health carrier's intermediaries, and any provider network with which the health carrier contracts. A health carrier may not adopt selection criteria that allow the health carrier to:

(a) avoid high-risk populations by excluding a provider because the provider is located in a geographic area that contains populations or providers presenting a risk of higher than average claims, losses, or use of health care services; or

(b) exclude a provider because the provider treats or specializes in treating populations presenting a risk of higher than average claims, losses, or use of health care services.

(2) Subsection (1) does not prohibit a health carrier from declining to select a provider who fails to meet the other legitimate selection criteria of the health carrier adopted in compliance with this part and the rules implementing this part.

(3) This part does not require a health carrier, its intermediary, or a provider network with which the health carrier or its intermediary contract to employ specific providers or types of providers who may meet their selection criteria or to contract with or retain more providers or types of providers than are necessary to maintain an adequate network.

(4) A health carrier may use criteria established in accordance with the provisions of this section to select health care professionals allowed to participate in the health carrier's managed care plan. A health carrier shall make its selection standards for participating providers available for review by the department and by each health care professional who is subject to the selection standards.

History: En. Sec. 15, Ch. 413, L. 1997.

33-36-204. Health carriers — general responsibilities. (1) A health carrier offering a managed care plan shall notify, in writing, prospective participating providers of the participating providers' responsibilities concerning the health carrier's administrative policies and programs, including but not limited to payment terms, utilization reviews, the quality assurance program, credentialing, grievance procedures, data reporting requirements, confidentiality requirements, and applicable federal or state requirements.

(2) A health carrier may not offer an inducement under a managed care plan to a participating provider to provide less than medically necessary services to a covered person.

(3) A health carrier may not prohibit a participating provider from discussing a treatment option with a covered person or from advocating on behalf of a covered person within the utilization review or grievance processes established by the health carrier or a person contracting with the health carrier.

(4) A health carrier shall require a participating provider to make health records available to appropriate state and federal authorities, in accordance with the applicable state and federal laws related to the confidentiality of medical or health records, when the authorities are involved in assessing the quality of care or investigating a grievance or complaint of a covered person.

(5) A health carrier and participating provider shall provide at least 60 days' written notice to each other before terminating the contract between them without cause. The health carrier shall make a good faith effort to provide written notice of a termination, within 15 working days of receipt or issuance of a notice of termination from or to a participating provider, to all covered persons who are patients seen on a regular basis by the participating provider whose contract is terminating, irrespective of whether the termination is for cause or without cause. If a contract termination involves a primary care professional, all covered persons who are patients of that primary care professional must be notified.

(6) A health carrier shall ensure that a participating provider furnishes covered benefits to all covered persons without regard to the covered person's enrollment in the plan as a private purchaser or as a participant in a publicly financed program of health care services. This requirement does not apply to circumstances in which the participating provider should not render services

because of the participating provider's lack of training, experience, or skill or because of a restriction on the participating provider's license.

(7) A health carrier shall notify the participating providers of their obligation, if any, to collect applicable coinsurance, copayments, or deductibles from covered persons pursuant to the evidence of coverage or of the participating providers' obligations, if any, to notify covered persons of the covered persons' personal financial obligations for noncovered benefits.

(8) A health carrier may not penalize a participating provider because the participating provider, in good faith, reports to state or federal authorities an act or practice by the health carrier that may adversely affect patient health or welfare.

(9) A health carrier shall establish a mechanism by which a participating provider may determine in a timely manner whether or not a person is covered by the health carrier.

(10) A health carrier shall establish procedures for resolution of administrative, payment, or other disputes between the health carrier and participating providers.

(11) A contract between a health carrier and a participating provider may not contain definitions or other provisions that conflict with the definitions or provisions contained in the managed care plan or this chapter.

(12) A contract between a health carrier and a participating provider shall set forth all of the responsibilities and obligations of the provider either in the contract or documents referenced in the contract. A health carrier shall make its best effort to furnish copies of any reference documents, if requested by a participating provider, prior to execution of the contract.

History: En. Sec. 16, Ch. 413, L. 1997.

33-36-205. Emergency services. (1) A health carrier offering a managed care plan shall provide or pay for emergency services screening and emergency services and may not require prior authorization for either of those services. If an emergency services screening determines that emergency services or emergency services of a particular type are unnecessary for a covered person, emergency services or emergency services of the type determined unnecessary by the screening need not be covered by the health carrier unless otherwise covered under the health benefit plan. However, if screening determines that emergency services or emergency services of a particular type are necessary, those services must be covered by the health carrier. A health carrier shall cover emergency services if the health carrier, acting through a participating provider or other authorized representative, has authorized the provision of emergency services.

(2) A health carrier shall provide or pay for emergency services obtained from a nonnetwork provider within the service area of a managed care plan and may not require prior authorization of those services if use of a participating provider would result in a delay that would worsen the medical condition of the covered person or if a provision of federal, state, or local law requires the use of a specific provider.

(3) If a participating provider or other authorized representative of a health carrier authorizes emergency services, the health carrier may not subsequently retract its authorization after the emergency services have been provided or reduce payment for an item or health care services furnished in reliance on approval unless the approval was based on a material misrepresentation about the covered person's medical condition made by the provider of emergency services.

(4) Coverage of emergency services is subject to applicable coinsurance, copayments, and deductibles.

(5) For postevaluation or poststabilization services required immediately after receipt of emergency services, a health carrier shall provide access to an authorized representative 24 hours a day, 7 days a week, to facilitate review.

History: En. Sec. 17, Ch. 413, L. 1997.

33-36-206 through 33-36-208 reserved.

33-36-209. Use of intermediaries — responsibilities of health carriers, intermediaries, and providers. (1) A health carrier is responsible for complying with applicable provisions of this chapter, and contracting with an intermediary for all or some of the services for which a health carrier is responsible does not relieve the health carrier of responsibility for compliance.

(2) A health carrier may determine whether a subcontracted provider participates in the provider's own network or a contracted network for the purpose of providing covered benefits to the health carrier's covered persons.

(3) A health carrier shall maintain copies of all intermediary health care subcontracts at the health carrier's principal place of business in this state or ensure that the health carrier has access to all intermediary subcontracts, including the right to make copies of the contracts, upon 20 days' prior written notice from the health carrier.

(4) If required in a contract or otherwise by a health carrier, an intermediary shall transmit utilization documentation and claims-paid documentation to the health carrier. The health carrier shall monitor the timeliness and appropriateness of payments made to providers and health care services received by covered persons. This duty may not be delegated to an intermediary by a health carrier.

(5) If required in a contract or otherwise by a health carrier, an intermediary shall maintain the books, records, financial information, and documentation of services provided to covered persons at its principal place of business in the state and preserve them for 5 years in a manner that facilitates regulatory review.

(6) An intermediary shall allow the commissioner and the department access to the intermediary's books, records, claim information, billing information, and other documentation of services provided to covered persons that are required by any of those entities to determine compliance with this part and the rules implementing this part.

(7) A health carrier may, in the event of the intermediary's insolvency, require the assignment to the health carrier of the provisions of a participating provider's contract addressing the participating provider's obligation to furnish covered benefits.

History: En. Sec. 18, Ch. 413, L. 1997.

33-36-210. Contract filing requirements — material changes — state access to contracts. (1) On October 1, 1999, a health carrier offering a managed care plan shall file with the department sample contract forms proposed for use with its participating providers and intermediaries.

(2) A health carrier shall file with the department a material change to a contract. The change must be filed with the department at least 60 days before use of the proposed change. A change in a participating provider payment rate, coinsurance, copayment, or deductible or other plan benefit is not considered a material change for the purpose of this subsection.

(3) A health carrier shall maintain participating provider and intermediary contracts at its principal place of business in this state, or the health carrier must have access to all contracts and provide copies to the department upon 20 days' prior written notice from the department.

History: En. Sec. 19, Ch. 413, L. 1997.

33-36-211. General contracting requirements. (1) The execution of a contract for health care services with an intermediary by a health carrier does not relieve the health carrier of its duty to provide health care services to a person with whom the health carrier has contracted and does not relieve the health carrier of its responsibility for compliance with this chapter or the rules implementing this chapter.

(2) All contracts by a health carrier for the provision of health care services by a managed care plan must be in writing and are subject to review by the department and the commissioner.

History: En. Sec. 20, Ch. 413, L. 1997.

33-36-212. Contract compliance dates. (1) A contract between a health carrier and a participating provider or intermediary in effect on October 1, 1999, must comply with this part and the rules implementing this part by October 1, 1999. The department may extend the October 1 date for an additional period of up to 6 months if the health carrier demonstrates good cause for an extension.

(2) A contract between a health carrier and a participating provider or intermediary issued or put into effect on or after October 1, 1999, must comply with this part and the rules implementing this part on the day that it is issued or put into effect.

(3) A contract between a health carrier and a participating provider or intermediary not described in subsection (1) or (2) must comply with this part and the rules implementing this part by October 1, 1999.

History: En. Sec. 21, Ch. 413, L. 1997.

33-36-213. Department rules. The department may adopt rules to implement this part.

History: En. Sec. 22, Ch. 413, L. 1997.

Part 3

Quality Assurance

33-36-301. Quality assurance — national accreditation. (1) A health carrier whose managed care plan has been accredited by a nationally recognized accrediting organization shall annually provide a copy of the accreditation and the accrediting standards used by the accrediting organization to the department.

(2) If the department finds that the standards of a nationally recognized accrediting organization meet or exceed state standards and that the health carrier has been accredited by the nationally recognized accrediting organization, the department shall approve the quality assurance standards of the health carrier.

(3) The department shall maintain a list of accrediting organizations whose standards have been determined by the department to meet or exceed state quality assurance standards.

(4) Section 33-36-302 does not apply to a health carrier's managed care plan if the health carrier maintains current accreditation by a nationally recognized accrediting organization whose standards meet or exceed state quality assurance standards adopted pursuant to this part.

(5) This section does not prevent the department from monitoring a health carrier's compliance with this part.

History: En. Sec. 23, Ch. 413, L. 1997.

33-36-302. Standards for health carrier quality assessment programs. A health carrier that issues a closed plan or a combination plan shall adopt and use infrastructure and disclosure systems sufficient to accurately measure the quality of health care services provided to covered persons on a regular basis and appropriate to the types of plans offered by the health carrier. To comply with this requirement, a health carrier shall:

(1) establish and use a system designed to assess the quality of health care provided to covered persons and appropriate to the types of plans offered by the health carrier. The system must include systematic collection, analysis, and reporting of relevant data.

(2) communicate in a timely fashion its findings concerning the quality of health care to regulatory agencies, providers, and consumers as provided in 33-36-304;

(3) report to the appropriate professional or occupational licensing board provided in Title 37 any persistent pattern of problematic care provided by a participating provider that is sufficient to cause the health carrier to terminate or suspend a contractual arrangement with the participating provider; and

(4) file a written description of the quality assessment program and any subsequent material changes with the department in a format that must be prescribed by rules of the department. The description must include a signed certification by a corporate officer of the health carrier that the health carrier's quality assessment program meets the requirements of this part.

History: En. Sec. 24, Ch. 413, L. 1997.

33-36-303. Standards for health carrier quality improvement programs. A health carrier that issues a closed plan or a combination plan shall, in addition to complying with 33-36-302, adopt and use systems and methods necessary to improve the quality of health care provided in the health carrier's managed care plan as indicated by the health carrier's quality assessment program and as required by this section. To comply with this requirement, a health carrier subject to this section shall:

(1) establish an internal system capable of identifying opportunities to improve care;

(2) use the findings generated by the system required by subsection (1) to work on a continuing basis with participating providers and other staff within the closed plan or closed component to improve the health care delivered to covered persons;

(3) adopt and use a program for measuring, assessing and improving the outcomes of health care as identified in the health carrier's quality improvement program plan. This quality improvement program plan must be filed with the department by October 1, 2000, and must be consistent with this part. A health carrier shall file any subsequent material changes to its quality improvement program plan within 30 days of implementation of the change. The quality improvement program plan must:

(a) implement improvement strategies in response to quality assessment findings that indicate improvement is needed; and

(b) evaluate, not less than annually, the effectiveness of the strategies implemented pursuant to subsection (3)(a).

History: En. Sec. 25, Ch. 413, L. 1997.

33-36-304. Reporting and disclosure requirements. (1) A health carrier offering a closed plan or a combination plan shall document and communicate information, as required in this section, about its quality assurance program. The health carrier shall:

(a) include a summary of its quality assurance program in marketing materials;

(b) include a description of its quality assurance program and a statement of patient rights and responsibilities with respect to that program in the certificate of coverage or handbook provided to newly enrolled covered persons; and

(c) make available annually to providers and covered persons a report containing findings from its quality assurance program and information about its progress in meeting internal goals and external standards, when available.

(2) A health carrier shall certify to the department annually that its quality assurance program and the materials provided to providers and consumers in accordance with subsection (1) meet the requirements of this part.

(3) A health carrier shall make available, upon request and payment of a reasonable fee, the materials certified pursuant to subsection (2), except for the materials subject to the confidentiality requirements of 33-36-305 and materials that are proprietary to the managed care plan. A health carrier shall retain all certified materials for at least 3 years from the date that the material was certified or until the material has been examined as part of a market conduct examination, whichever is later.

History: En. Sec. 26, Ch. 413, L. 1997.

33-36-305. Confidentiality of health care and quality assurance records — disclosure. (1) Except as provided in subsection (2), the following information held by a health carrier offering a closed plan or a combination plan is confidential and may not be disclosed by the carrier to a person:

(a) information pertaining to the diagnosis, treatment, or health of a covered person, regardless of whether the information is in the form of paper, is preserved on microfilm, or is stored in computer-retrievable form;

(b) information considered by a quality assurance program and the records of its actions, including testimony of a member of a quality committee, of an officer, director, or other member of a health carrier or its staff engaged in assisting the quality committee or engaged in the health carrier's quality assessment, quality improvement, or quality assurance activities, or of any person assisting or furnishing information to the quality committee.

(2) The information specified in subsection (1) may be disclosed:

(a) as allowed by Title 33, chapter 19;

(b) as required in proceedings before the commissioner, a professional or occupational licensing board provided in Title 37, or the department pursuant to Title 50, chapter 5, part 2;

(c) in an appeal, if an appeal is permitted, from a quality committee's findings or recommendations; or

(d) as otherwise required by law or court order, including a judicial or administrative subpoena.

(3) Information specified in subsection (1) identifying:

(a) the provider may also be disclosed upon a written, dated, and signed approval of the provider if the information does not identify the covered person;

(b) the covered person may also be disclosed upon a written, dated, and signed approval of the covered person or of the parent or guardian of a covered person if the covered person is a minor and if the information does not identify the provider;

(c) neither the provider nor the covered person may also be disclosed upon request for use for statistical purposes only.

History: En. Sec. 27, Ch. 413, L. 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

Government Health Care Information Act, Title 50, ch. 16, part 6.

Part 4

Enforcement

33-36-401. Enforcement. (1) If the department determines that a health carrier has not complied with this chapter or the rules implementing this chapter, the department may recommend corrective action to the health carrier.

(2) At the recommendation of the department the commissioner may take an enforcement action provided in subsection (3) if:

(a) a health carrier fails to implement corrective action recommended by the department;

(b) corrective action taken by a health carrier does not result in bringing a health carrier into compliance with this chapter and the rules implementing this chapter within a reasonable period of time;

(c) the department demonstrates to the commissioner that a health carrier does not comply with this chapter or the rules implementing this chapter; or

(d) the commissioner determines that a health carrier has violated or is violating this chapter or the rules implementing this chapter.

(3) The commissioner may take any of the following enforcement actions to require a health carrier to comply with this chapter or the rules implementing this chapter:

(a) suspend or revoke the health carrier's certificate of authority or deny the health carrier's application for a certificate of authority; or

(b) use any of the commissioner's other enforcement powers provided in Title 33, chapter 1, part 3.

History: En. Sec. 28, Ch. 413, L. 1997.

33-36-402. Jurisdiction over contract actions. The district courts have jurisdiction over actions for the enforcement of contracts authorized or regulated by this chapter.

History: En. Sec. 29, Ch. 413, L. 1997.

CHAPTER 37

REGULATION OF HEALTH CARRIERS AND MANAGED CARE ENTITIES

Part 1 — General Provisions

33-37-101. Definitions.
33-37-102. Independent review of adverse determinations.
33-37-103. Peer review.
33-37-104. Contract provisions — contract termination.
33-37-105. Rulemaking authority.
33-37-106. Application to certain entities.

Chapter Compiler's Comments

Effective Date: This chapter is effective October 1, 1999.

Part 1

General Provisions

33-37-101. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Adverse determination" means a determination by a health carrier, a managed care entity, or an agent of a health carrier or managed care entity that the health care services furnished or proposed to be furnished to an enrollee are not appropriate and medically necessary.

(2) "Appropriate and medically necessary" means the standard for health care services as determined by health care providers in accordance with the prevailing practices and standards of the health care profession and community.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Enrollee" has the meaning provided for a covered person as defined in 33-36-103.

(5) "Health benefit plan" has the meaning provided in 33-36-103.

(6) "Health care provider" has the meaning provided in 33-36-103.

(7) "Health care treatment decision" means a determination made when medical services are actually provided by a health carrier or other managed care entity and that affects the quality of the diagnosis, care, or treatment provided to the insureds or enrollees of a health benefit plan. The term does not include a decision by a health carrier or managed care entity to deny payment or coverage for services based on the provisions of a policy, contract, certificate, or agreement.

(8) "Health carrier" has the meaning provided for in 33-36-103.

(9) (a) "Managed care entity" means a health carrier or any entity that delivers, administers, or assumes risk for health care services with systems or techniques to control or influence the quality, accessibility, utilization, or costs and prices of health care services to a defined enrollee population.

(b) The term does not include an employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

(10) "Peer" means a health care provider actively practicing a health care profession in this state who has substantially the same education and training, who provides substantially the same range of health care services, and who has the same license or certification to practice as the health care provider whose practice, professional services, or activities on behalf of the enrollee are being considered, reviewed, evaluated, or judged.

History: En. Sec. 1, Ch. 482, L. 1999.

33-37-102. Independent review of adverse determinations. A health carrier or managed care entity or an agent of a health carrier or managed care entity, other than a health carrier or other managed care entity providing medicaid-funded services or any other publicly funded health care-related services authorized under Title 50, 52, or 53, shall:

(1) permit any party whose appeal of an adverse determination is denied by the health carrier, the managed care entity, or the agent of the health carrier or managed care entity to seek independent review of that determination by a peer or, if the health carrier or managed care entity does not maintain an appeals process, permit any party receiving an adverse determination to seek independent review of that determination;

(2) provide to the appropriate peer no later than the third business day after the date that the health carrier, the managed care entity, or the agent of the health carrier or managed care entity receives a request for review a copy of:

(a) any medical records of the enrollee that are relevant to the review. Confidential information in the custody of the health carrier, the managed care entity, or the agent of the health carrier or managed care entity may be provided to a peer.

(b) any documents used by the health carrier, the managed care entity, or the agent of the health carrier or managed care entity in making the determination to be reviewed by the peer;

(c) any documentation and written information submitted to the health carrier, the managed care entity, or the agent of the health carrier or managed care entity in support of the appeal; and

(d) a list of each health care provider who has provided care to the enrollee and who may have medical records relevant to the appeal;

(3) accept and comply with the findings made by a peer conducting the independent review concerning an adverse determination, a determination as to

whether the services were appropriate and medically necessary, or a health care treatment decision; and

(4) pay for the reasonable costs of the independent review.

History: En. Sec. 2, Ch. 482, L. 1999.

33-37-103. Peer review. If independent review is requested pursuant to 33-37-102, the party seeking the review and the health carrier or managed care entity may agree on a peer to conduct the independent review. In the absence of an agreement, a peer must be selected in accordance with a process established by the department.

History: En. Sec. 3, Ch. 482, L. 1999.

33-37-104. Contract provisions — contract termination. (1) This chapter does not create any liability on the part of an employer or an employer group purchasing organization that purchases coverage or assumes risks on behalf of its employees.

(2) A health carrier or other managed care entity may not enter into a contract with a health care provider that includes an indemnification or hold harmless clause for the acts or conduct of the health carrier or other managed care entity. Any indemnification or hold harmless clause in a contract entered into, amended, or renewed on or after October 1, 1999, is void.

(3) A health care provider, a health carrier, or other managed care entity may not terminate a contract with a participating provider prior to the expiration of its term except for just cause. For purposes of this subsection, "just cause" means reasonable grounds for termination based on a failure to satisfactorily perform contract obligations or other legitimate business reason.

(4) The provisions of this section are not applicable to any contracts for health care services entered into by the state.

History: En. Sec. 4, Ch. 482, L. 1999.

33-37-105. Rulemaking authority. The department shall adopt rules to provide a process for selecting peers, ensuring the confidentiality of health care information, and implementing the provisions of this chapter.

History: En. Sec. 5, Ch. 482, L. 1999.

33-37-106. Application to certain entities. (1) This chapter applies to contracts between a health carrier, managed care entity, or the health carrier's or managed care entity's agent and an insured or enrollee and contracts between a health carrier, managed care entity, or the health carrier's or managed care entity's agent and a health care provider entered into on or after October 1, 1999.

(2) This chapter does not apply to the Montana medicaid program, the children's health insurance program, or other state-funded health care-related programs. Unless specifically provided otherwise, this chapter does apply to a managed care entity that contracts with the state to provide these programs and that makes health care treatment decisions concerning the beneficiaries of the programs.

(3) This chapter does not apply to a health carrier, managed care entity, or preferred provider organization that provides services under Title 39, chapters 71 and 72.

History: En. Sec. 8, Ch. 482, L. 1999.

TITLE 34

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